1974

A

DIGEST

OF

HINDU LAW,

ON

CONTRACTS AND SUCCESSIONS:

WITH A

COMMENTARY

BY JAGANNÁT'HA TERCAPANCHÁNANA.

Translated from the Original SANSCRIT,

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IN THREE VOLUMES.

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THE TANJORE MAHARAJA SERFOJI'S SARASWATI MAHAL
1974

TO

THE MEMORY OF

SIR WILLIAM JONES,

THIS TRANSLATION

OF A

DIGEST,

COMPILED UNDER HIS SUPERINTENDENCE,

IS,

WITH GREAT VENERATION,

INSCRIBED

BY

THE TRANSLATOR.

THE TANJORE ... SWATI MAHAL. *

THE PREFACE.

THE motives for undertaking the compilation of a New Digeſt of Indian Law, are ſo well unfolded in a letter addreſſed by the late Sir WILLIAM JONES to the Supreme Council of Bengal, that it will ſuffice to extract therefrom the ſentiments expreſſed by that venerable Magiſtrate. It muſt ever be regretted, that the Public has loſt, by his premature death, a tranſlation, from his pen, of a Digeſt compiled under his direction, and an introductory Diſcourſe, for which he had prepared curious and ample materials*. The loſs is irreparable; for, no other joins to a competent knowledge of Oriental Languages, that legiſlative ſpirit and intimate acquaintance with the Principles of Juriſprudence, which he poſſeſſed in ſo eminent a degree.

"Nothing," ſays Sir WILLIAM JONES, in the addreſs alluded to, "could be more obviouſly juſt "than to determine private conteſts according to "thoſe laws which the parties themſelves had ever "conſidered as the rules of their conduct and en"gagements in civil life; nor could any thing be

* See his laſt Anniverſary Diſcourſe as Preſident of the Aſiatic Society, Vol. IV, p. 176.

" wiſer than, by a legiſlative act, to aſſure the " *Hindu* and *Muſelman* ſubjects of Great Britain, " that the private laws which they ſeverally hold " ſacred, and a violation of which they would have " thought the moſt grievous oppreſſion, ſhould not " be ſuperſeded by a new ſyſtem, of which they could " have no knowledge, and which they muſt have " conſidered as impoſed on them by a ſpirit of ri- " gour and intolerance. So far the principle of de- " ciſion between the native parties in a cauſe appears " perfectly clear: but the difficulty lies (as in moſt " other caſes) in the application of the principle to " practice; for the *Hindu* and *Muſelman* laws are " locked up for the moſt part in two very difficult " languages, Sanſcrit and Arabic, which few Eu- " ropeans will ever learn, becauſe neither of them " leads to any advantage in worldly purſuits; and " if we give judgment only from the opinions of " the native lawyers and ſcholars, we can never be " ſure that we have not been deceived by them. " It would be abſurd and unjuſt to paſs an indiſcri- " minate cenſure on a conſiderable body of men; " but my experience juſtifies me in declaring, that " I could not, with an eaſy conſcience, concur in " a deciſion, merely on the written opinion of na- " tive lawyers, in any cauſe in which they could " have the remoteſt intereſt in miſleading the Court: " nor, how vigilant ſoever we might be, would it " be very difficult for them to miſlead us; for a " ſingle

" ſingle obſcure text, explained by themſelves, might
" be quoted as expreſs authority, though perhaps,
" in the very book from which it was ſelected, it
" might be differently explained, or introduced
" only for the purpoſe of being exploded. The ob-
" vious remedy for this evil had occurred to me
" before I left England, where I had communicated
" my ſentiments to ſome friends in Parliament, and
" on the Bench in Weſtminſter Hall, of whoſe diſ-
" cernment I had the higheſt opinion; and thoſe
" ſentiments I propoſe to unfold, in this letter, with
" as much brevity as the magnitude of the ſubject
" will admit. If we had a complete Digeſt of *Hindu*
" and *Muhammedan* Laws, after the model of JUS-
" TINIAN's ineſtimable Pandects, compiled by the
" moſt learned of the native lawyers, with an accu-
" rate verbal tranſlation of it into Engliſh; and if
" copies of the work were repoſited in the proper
" offices of the *Sedr Diwáni Adálat*, and of the Su-
" preme Court, that they might occaſionally be
" conſulted as a ſtandard of juſtice, we ſhould rarely
" be at a loſs for principles at leaſt, and rules of law,
" applicable to the caſes before us, and ſhould never
" perhaps be led aſtray by the *Pandits* or *Maulavis*,
" who would hardly venture to impoſe on us, when
" their impoſition might ſo eaſily be detected. The
" great work, of which JUSTINIAN has the credit,
" conſiſts of texts collected from law-books of approv-
" ed authority, which in his time were extant at

" Rome: and thoſe texts are digeſted according to
" a ſcientifical analyſis; the names of the original
" authors, and the titles of their ſeveral books,
" being conſtantly cited, with references even to the
" parts of their works from which the different paſ-
" ſages were ſelected. But although it comprehends
" the whole ſyſtem of juriſprudence, public, private,
" and criminal, yet that vaſt compilation was finiſh-
" ed, we are told, in three years: it bears marks,
" unqueſtionably, of great precipitation, and of a
" deſire to gratify the Emperor by quickneſs of diſ-
" patch; but, with all its imperfections, it is a moſt
" valuable mine of juridical knowledge. It gives
" law at this hour to the greateſt part of Europe;
" and, though few Engliſh lawyers dare make ſuch
" an acknowledgment, it is the true ſource of nearly
" all our Engliſh laws that are not of a feudal origin.
" It would not be unworthy of a Britiſh Govern-
" ment to give the Natives of theſe Indian provinces
" a permanent ſecurity for the due adminiſtration of
" juſtice among them, ſimilar to that which JUSTI-
" NIAN gave to his Greek and Roman ſubjects;
" but our compilation would require far leſs labour,
" and might be completed with far greater exact-
" neſs, in as ſhort a time; ſince it would be confined
" to the laws of Contracts and Inheritances, which
" are of the moſt extenſive uſe in private life, and
" to which the Legiſlature has limited the deciſions
" of the Supreme Court in cauſes between native

" parties:

" parties: the labour of the work would alſo be " greatly diminiſhed by two compilations already " made in Sanſcrit and Arabic, which approach " nearly, in merit and in method, to the Digeſt of " JUSTINIAN. The firſt was compoſed a few centu- " ries ago by a *Bráhmen* of this province, named " RAGHUNANDANA, and is compriſed in twenty- " ſeven books at leaſt, on every branch of *Hindu* " law: the ſecond, which the Arabs call the Indian " Deciſions, is known here by the title of *Fetáwii* " *Aálemgiri*, and was compiled, by the order of " AURANGZIB, in five large volumes, of which I " poſſeſs a perfect and well collated copy. To tranſ- " late theſe immenſe works, would be ſuperfluous " labour; but they will greatly facilitate the com- " pilation of a Digeſt on the Laws of Inheritance " and Contracts; and the Code, as it is called, of " *Hindu* Law, which was compiled at the requeſt of " Mr. HASTINGS, will be uſeful for the ſame pur- " poſe, though it by no means obviates the difficul- " ties before ſtated, nor ſuperſedes the neceſſity, or " the expedience at leaſt, of a more ample repoſitory " of *Hindu* laws, eſpecially on the twelve different " contracts, to which ULPIAN has given ſpecific " names, and on all the others, which, though not " ſpecifically named, are reducible to four general " heads. The laſt-mentioned work is intitled *Vi-* " *vádárnava Sétu*, and conſiſts, like the Roman Di- " geſt, of authentic texts, with the names of their

" ſeveral

" ſeveral authors regularly prefixed to them, and
" explained, where an explanation is requiſite, in
" ſhort notes, taken from commentaries of high au-
" thority: it is, as far as it goes, a very excellent
" work; but though it appear extremely diffuſe on
" ſubjects rather curious than uſeful, and though
" the chapter on Inheritances be copious and exact,
" yet the other important branch of juriſprudence,
" the Law of Contracts, is very ſuccinctly and ſuper-
" ficially diſcuſſed, and bears an inconſiderable pro-
" portion to the reſt of the work. But, whatever
" be the merit of the original, the tranſlation of it
" has no authority, and is of no other uſe than to
" ſuggeſt inquiries on the many dark paſſages which
" we find in it: properly ſpeaking, indeed, we can-
" not call it a tranſlation; for though Mr. HALHED
" performed his part with fidelity, yet the Perſian
" interpreter had ſupplied him only with a looſe in-
" judicious epitome of the original *Sanſcrit*, in
" which abſtract many eſſential paſſages are omitted,
" though ſeveral notes of little conſequence are in-
" terpolated, from a vain idea of elucidating or im-
" proving the text *."

Beſides

* The letter from which this extract is taken, is dated 19th March 1788. On the ſame date, the then Governor General, MARQUIS CORNWALLIS, with the concurrence of the Members of Council, accepted the offer in terms honourable to the propoſer, and expreſſive of the moſt liberal ſentiments. " The object of your propoſition," they

ſay,

Besides the great work of RAGHUNANDANA above mentioned, many other Digests have been compiled by *Hindu* lawyers; which, like his, consist of texts collected from the Institutes attributed to ancient legislators, with a gloss, explanatory of the sense, and reconciling seeming contradictions, to fulfil the precept of their great lawgiver, "When there are "two sacred texts apparently inconsistent, both are "held to be law; for both are pronounced by the "Wise to be valid and reconcileable*." From various digests, and from commentaries on the institutes of law, the present Digest has been compiled; and the venerable author, JAGANNÁT'HA, has added a copious commentary, sometimes indeed pursuing frivolous disquisitions, but always fully explaining the various interpretations of which the text is susceptible. In restricting this compilation to the law of contracts and successions, he has omitted the law of evidence, the rules of pleading, the rights of landlord and tenant, the decision of questions respecting boundaries, with some other topics, which should be likewise treated for the purpose of assisting courts of civil judicature in deciding private contests according to the laws which the *Hindu* subjects of Great

say, "being to promote a due administration of justice, it becomes "interesting to humanity; and it is deserving of our peculiar attention, "as being intended to increase and secure the happiness of the numerous "subjects of the Company's provinces."

* MENU, Chap. II, v. 41.

Great Britain hold facred. The body of Indian Law comprifes a fyftem of duties religious and civil. Separating the topic of religious duties, and omitting ethical fubjects, *Hindu* lawyers have confidered civil duties under the diftinct heads of private contefts and forenfic practice: the firft comprehends law private and criminal; the laft includes the forms of judicial procedure, rules of pleading, law of evidence written and oral, adverfe titles, oaths, and ordeal. The tranflation of MENU has fufficiently made known the criminal law of the *Hindus*, which is now fuperfeded by the *Muhammedan* fyftem: but another head of private contefts, in which, under the name of difputes concerning boundaries, the rights of hufbandmen are examined, contains matter both curious and ufeful; practical law, efpecially the fyftem of evidence, muft be fometimes confulted in the provincial courts, which are not governed by Englifh law; and the rules of fpecial pleading have been pronounced excellent by one whofe opinion has great weight*.

The *D'herma Sáftra*, or facred code of law, comprifing all the fubjects above mentioned, is called *Smrĭti*, what was remembered, in contradiftinction to *Sruti*, what was heard. By thefe names it is fignified, that the *Véda* has preferved the words of revelation, while the fyftem of law records the fenfe expreffed

* Sir William Jones, in a manufcript note.

preſſed in other words. It has been promulgated by thirty-ſix ancient Sages, who are named in three verſes of the *Padma purána;* YÁJNYAWALCYA, however, mentions no more than twenty: on the other hand, Sages are cited in law tracts, whoſe names do not appear in either liſt. Treatiſes, attributed to theſe ancient philoſophers, are extant, which internal evidence proves to be, though probably compoſed by other perſons, as the *Puránas,* written by many different authors, are all aſcribed to VYÁSA; for, the dramatic form which has been given to moſt of thoſe tracts, and the uſe of the third perſon when the reputed author is named in his code, extort a confeſſion from commentators, that the inſtitutes muſt have been compoſed by pupils from the recollection of precepts delivered by their holy inſtructor. Without examining whether the authenticity of codes now extant be thus ſufficiently eſtabliſhed, the *Hindus* revere thoſe inſtitutes, as containing a ſyſtem of ſacred law confirmed by the *Véda* itſelf, in a text thus tranſlated by Sir WILLIAM JONES according to the gloſs of SANCARA: "GOD, having created the four claſſes, had not yet completed his work; but, in addition to it, leſt the royal and military claſs ſhould become inſupportable through their power and ferocity, he produced the tranſcendent body of law; ſince law is the king of kings, far more powerful and rigid than they: nothing can be mightier than

than law, by whoſe aid, as by that of the higheſt monarch, even the weak may prevail over the ſtrong."

Concerning the birth and actions of the legiſlators, we know little more than what is recorded in the *Puránas;* and the whole of what is there recorded, belongs either to heroic hiſtory, or to mythology. Such topics would be here miſplaced: but a ſhort notice of the inſtitutes, commentaries, and digeſts, which have been uſed by the compiler, may be fitly ſubjoined to introduce to the reader's acquaintance the authorities cited in the work.

The laws of MENU, who is revered by *Hindus* as the firſt of legiſlators, have already appeared in the Engliſh language. Among the numerous commentaries on his inſtitutes, the moſt eſteemed have been noticed in the preface to the tranſlation of his work, namely a commentary by MÉD'HÁTIT'HI ſon of BÍRASWÁMI BHAṬṬA, which, having been partly loſt, has been completed by other hands at the court of MADANA PÁLA, a prince of *D'ig'h;* another commentary by G'OVINDA RÁJA; a third by D'HARANID'HERA; and the celebrated gloſs of CULLÚCABHATTA, intitled *Menwart'ha Muctávalí,* and ſome others, are occaſionally quoted in this Digeſt.

ATRI, not named among legiſlators in the *Padma purána,*

purána, is ſecond in the liſt of YÁJNYAWALCYA: he is one of the ten lords of created beings*, and father of DATTATREYA, DURVÁSAS and SÓMA: a perſpicuous treatiſe in verſe, attributed to him, is extant. VISHŃU, not the Indian divinity, but an ancient philoſopher who bore this name, is reputed author of an excellent law treatiſe in verſe; and HÁRÍTA is cited as the author of a treatiſe in proſe: metrical abridgements of both works are alſo extant.

YÁJNYAWALCYA, grandſon of VISWÁMITRA, is deſcribed, in the introduction of his own inſtitutes, as delivering his precepts to an audience of ancient philoſophers aſſembled in the province of *Mit'hilá*. Theſe inſtitutes have been arranged in three chapters, containing one thouſand and twenty-three couplets. An excellent commentary, intitled *Mitácſhará*, was compoſed by VIJNYANÉSWARA, a hermit, who cites other legiſlators in the progreſs of his work, and expounds their texts, as well as thoſe of his author, thus compoſing a treatiſe which may ſupply the place of a regular digeſt: it is ſo uſed in the province of *Benares*, where it is preferred to other law tracts; but ſome of his opinions have been ſucceſsfully controverted by late writers. Following the arrangement of his author, he has divided his work into three parts: the firſt treats of duties; the ſecond, of private conteſts and adminiſtrative law; the third, of puri-fication,

* MENU, Chap. I, v. 35.

fication, the orders of devotion, penance and ſo forth. Another commentary on YÁJNYAWALCYA by DÉVABÓD'HA, and one by VISWARÚPA, are occaſionally cited. The *Dípacalicá* by 'SÚLAPÁŃI, which is likewiſe a commentary on YÁJNYAWALCYA, is in deſerved repute with the *Gauríya* ſchool.

US'ANAS is another name of SUCRA, the regent of the planet Venus: he was grandſon of BHRĬGU: his inſtitutes in verſe, with an abridgement, are extant; as is a ſhort treatiſe containing about ſeventy couplets aſcribed to ANGIRAS, who holds a place among the ten lords of created beings, and, according to the *Bhágavata*, became father of UTAT'HYA and of VRĬHASPATI in the reign of the ſecond MENU. A ſhort tract containing a hundred couplets is attributed to YAMA, brother of the ſeventh MENU, and ruler of the world below: CULLÚCABHAṬṬA wrote a gloſs on his inſtitutes. APASTAMBA was author of a work in proſe, which is extant, with an abridgement in verſe; but the metrical abridgement only of the inſtitutes of SAMVERTA is among the tracts which were collected for the preſent compilation. CÁTYÁYANA is author of a clear and full treatiſe on law, and alſo wrote on grammar and on other ſubjects. VRĬHASPATI, regent of the planet Jupiter, has a place among legiſlators; he was ſon of ANGIRAS according to one legend, but ſon of DÉVALA according to another; the abridgement of his inſtitutes, if not the code at large,

large, is extant. PARÁSARA, grandſon of VA-ŚISHT'HA, is termed the higheſt authority for the fourth age: a work attributed to him is extant, with a commentary by MÁDHAVÁCHÁRYA. VYÁSA, ſon of PARÁSARA, is reputed author of the *Puránas*, which, with ſome works more immediately connected with law, are often cited in his name. SANC'HA and LIC'HITA are the authors of a joint work in proſe, which has been abridged in verſe: their ſeparate tracts in verſe are alſo extant. Heroic hiſtory notices two perſonages of the name of DACSHA; one ſon of BRAHMÁ, the other ſon of PRACH'ETAS: a ſimilar legend on the marriage of their daughters, and which is evidently allegorical, is told of both: it does not appear certain which of them is the legiſlator; however, a law treatiſe in verſe is dignified with this name. GAUTAMA, ſon of the celebrated founder of a rational ſyſtem of metaphyſics and logic, is named in every liſt of legiſlators, although texts are cited in the name of his father GÓTAMA, the ſon of UTAT'HYA: an elegant treatiſe in proſe is aſcribed to GAUTAMA. S'ÁTÁTAPA is author of a treatiſe on penance and expiation, of which an abridgement in verſe is extant. VAŚISHT'HA, the preceptor of the inferior gods, and one of the lords of created beings, is the laſt of twenty legiſlators named by YÁJNYAWALCYA: his elegant work in proſe mixed with verſe is extant.

In the *Padma purána* the number of thirty-ſix legiſlators is completed by the following names: MARÍCHI, the father of CAŚYAPA; PULASTYA, father of AGASTYA; PRACHÉTAS, ſon of PRÁCHÍNAVARHISHA by a daughter of the Ocean, and father of DACSHA; BHRĬGU, ſon of MENU; NÁREDA, begotten by BRAHMÁ, and again by CAŚYAPA, on the wife of DACSHA; CAŚYAPA, ſon of MARÍCHI; VISWÁMITRA, a Sage among military men, who became a *Bráhmana* through his devotion; DÉVALA, ſon of VISWÁMITRA, and grandfather of the celebrated grammarian PÁŃINI, but according to another legend great-grandſon of DACSHA; RĬSHYAŚRĬNGA, ſon of VIBHÁNDACA by a miraculous birth from a doe; GÁRGYA, the aſtronomer; BAUD'HÁYANA, who is frequently cited by lawyers; PAIT'HÍNASI, who is alſo cited in this Digeſt; JÁBÁLI, SUMANTU, PARÁSCARA, LÓCÁCSHI and CUT'HUMI, whoſe names rarely occur in any compilation of law.

Beſides theſe legiſlators, DHAUMYA, the prieſt of the *Pándavas*, and author of a commentary on the *Yajurvéda*, ÁŚWALÁYANA, who wrote on the detail of religious acts and ceremonies, and DATTA, the ſon of ATRI, are cited in this compilation; and BHÁGURI is quoted for a gloſs on the inſtitutes of MENU.

The *Rámáyana* of VÁLMICI, the earlieſt epic poem, is cited as nearly equal in authority with the

poems on mythology and heroic hiſtory, which are aſcribed to VYÁSA. For the purpoſe of elucidation, the compiler ſometimes quotes metaphyſical rules and ethical maxims, and, with particular veneration, the ſublime works of UDAYANÁCHÁRYA, the reviver of the rational ſyſtem of philoſophy. For the ſame purpoſe he has made ſome uſe of the dramas and epic poem of CÁLIDÁSA, and lyric poetry of JAYADÉVA. The treatiſes and commentaries of lawyers, which have been conſulted by the compiler, are numerous.

The *Ch'handóga pariśisht'a* by CÉSAVA MIŚRA a celebrated philoſopher, and its commentary named *Paris'isht'a pracás'a*, are works of great authority; they treat of the duties of prieſts, eſpecially thoſe who are guided in their religious ceremonies by the *Sámavéda*. A more general treatiſe, intitled *Dwaita paris'isht'a*, is the work of the ſame author, a native of *Mit'hilá*. The *Viváda Retnácara*, a digeſt highly eſteemed by the lawyers of *Mit'hilá* or *Tirabhucti*, was compiled under the ſuperintendence of CHAŃD'ÉŚWARA, miniſter of HARASINHADÉVA king of *Mit'hilá*. CHAŃD'ÉŚWARA is reputed author of other tracts. The *Viváda Chintámeni*, *Vyavahára Chintámeni*, and other works of VÁCHESPATI MISRA, are alſo in high repute among the lawyers of *Mit'hilá*. No more than ten or twelve generations have paſſed ſince he flouriſhed at *Semaul* in *Tirhút*.

The *Vivâda Chandra* and other works compofed by LAC'HIMÁDÉVÍ are likewife much refpected in the *Mit'hilá* fchool. This learned female fet the name of her nephew MISARU MISRA to all her compofitions on law and philofophy, and took the titles of her work from the tenth reigning prince, CHANDRASINHA, grandfon of HARASINHADÉVA. The *Vivâda Chandra* is never cited by name in the new digeft; although it has been frequently copied in the anonymous commentary.

The *Vyavahára-tatwa*, *Dáya-tatwa*, and other works of RAGHUNANDANA *Bandyaghat'iya*, are highly refpected by the *Gauríya* fchool. This great lawyer is frequently cited by the title of *Smárta-bhat't'áchárya*, as VÁCHESPATI MIS'RA is diftinguifhed by his family name of MIS'RA. The *Dwaita nirnaya* of VÁCHESPATI BHAT'T'ÁCHÁRYA, a treatife on queftions of law, is often quoted by the compiler of the new digeft, who has only once named him: in every other inftance he cites him by the appellation of "my venerable grandfather." In allufion to the fimilarity of their names, this lawyer adopted a title for his work from a fimilar treatife by VÁCHESPATI MIS'RA. The compiler of the new digeft alfo quotes his maternal grandfather's brother by the appellation of "modern VÁCHESPATI."

JÍMU'TAVÁHANA, who gave his name to a digeft intitled

intitled *D'harma retna,* is ſaid to have reigned on the throne of Sálivábana. He is probably the ſame with the ſon of Jímútacétu, a prince of the race of *Sil'ara,* who reigned at *Tagara**. The chapter on Inheritance is extant, with a commentary by 'Srí Crĭshńa Tercálancára, a modern writer of no great authority, who belongs to the *Gauríya* ſchool, and is often cited.

Heláyud'ha, the ſpiritual adviſer of Lacshmana Séna, (a renowned monarch who gave his name to an era of which ſix hundred and ninety-two years are expired,) is the author of the *Nyáyá servaswa, Bráhmana servaswa, Pandita servaswa,* and many other tracts on the adminiſtration of juſtice, and on the duties of claſſes and profeſſions. He was ſon of D'hananjaya the celebrated lexicographer; and his brothers Paśupati and Is'áńa are authors of rituals, the firſt for obſequies, &c. the ſecond for daily acts of religion.

Lacshmíd'hara compoſed a treatiſe on adminiſtrative juſtice, by command of Góvinda Chandra a king of *Cás'i,* ſprung from the *Váſtava* race of *Cáyaſt'has.* He is likewiſe author of a digeſt intitled *Calpateru,* which is often cited. By command of the ſame prince, Narasinha, ſon of Rámachandra the grammarian and philoſopher, compoſed a law-

* Aſiatic Reſearches, Vol. I. p. 357 and 361.

tract intitled *Góvindárnava*, and ſeveral other treatiſes.

'Srí Carácharya and his ſon 'Srínát'hácharya Chur'ámeńi were both celebrated lawyers of the *Mit'hilá* ſchool. The firſt wrote a treatiſe on inheritances; the laſt is author of a tract on the duties of the fourth claſs, which is intitled *Achárya chandricá*. I have not ſeen the other works of theſe authors.

The *Smrĭtiſára*, or, at full length, *Smrĭtyart'haſára*, by 'Sríd'harácharya, a prieſt of the *Dravir* tribe, is a treatiſe on religious duties, in which queſtions of civil duty are incidentally introduced. He cites the *Cámad'hénu*, a law tract ſaid to be a gloſs on Menu; but which, not having ſeen the book, I cannot affirm. The *Pradípa*, *Calpadruma*, and *Calpalatá*, works of which I can give no other notices, are cited in the *Smrĭtiſára*.

The *Madana Párijáta*, on civil duties, is the work of Viśwéśwarabhaṫṫa, and derives its name from Madana Pála, a prince of the *Ját* race, who reigned at *Cáſht'hanagar* or *D'ígh*. This work, which is ſometimes quoted in the name of Madana Pála himſelf, cites, among other authorities, the *Sáparárca* and *Smrĭtichandricá*, which do not appear to be otherwiſe known, and the *Hémádri*, which is occaſionally quoted in the new digeſt.

'Súlapáni,

'Súlapáni, a native of *Mit'hilá*, who refided at *Sahuria* in Bengal, wrote a treatife on penance and expiation, which is in great repute with both fchools. His commentary on Yájnyawalcya, intitled *Dípacalicá*, has been already noticed. Bhavadéva Bhaṫṫa, alfo called Balabalabhi Bhujanga, was author of feveral treatifes on religious duties. Thefe, with the rituals of the fame author, are much confulted in Bengal and in the fouthern provinces of India. Jiténdriya is often cited in the *Mitácfhará*, and fometimes in the new Digeft. Góyíchandra, Grahéśwara, D'háréswara, Balarúpa, Harihara, Murári Miśra, and many others, have been occafionally confulted.

Among modern digefts the moft remarkable are, the *Vivádárnava sétu*, compiled by order of Mr. Hastings; the *Viváda sârárnava*, compiled at the requeft of Sir William Jones, by Servóru Trivédí, a lawyer of *Mit'hilá*; and the *Viváda bhangárnava*, by Jagannát'ha, which is now tranflated.

On this tranflation I fhall briefly obferve, that the verfion of many texts come from the pen of Sir W. Jones; for moft of the laws quoted from Menu are found in his tranflation of the *Mánava d'herma s'áftra*, and other texts had been already tranflated by him when perufing the original digeft formerly compiled by order of Mr. Hastings. It has become

 my

my part to complete a tranſlation of the new digeſt of *Indian* law. Selected for this duty by Sir JOHN SHORE, whoſe attention extended to promote the happineſs of the native inhabitants of the provinces which he governs, and to encourage the labours of the literary ſociety over which he preſides, is no leſs conſpicuous than his ſucceſsful adminiſtration of the Britiſh intereſts in India, I have cheerfully devoted my utmoſt endeavours to deſerve the choice by which I was honoured: nothing, which diligence could effect, has been omitted to render the tranſlation ſcrupulouſly faithful; and to this it has been frequently neceſſary to ſacrifice perſpicuous diction. The reader, while he cenſures this and other defects of a work executed in the midſt of official avocations, will candidly conſider the obvious difficulties of the undertaking. Should it appear to him that much of the commentary might have been omitted without injury to the context, or that a better arrangemeut would have rendered the whole more perſpicuous, he will remember, that the tranſlator could uſe no freedom with the text, but undertook a verbal tranſlation of it: what has been inſerted to make this intelligible, is diſtinguiſhed by Italics, as was practiſed by Sir WILLIAM JONES in his verſion of MENU and of the *Sirájiyyah;* in very few inſtances has any greater liberty been taken, except grammatical explanations and etymologies, which are ſometimes though rarely omitted, or abridged, where a literal

literal verſion would have been wholly unintelligible to the Engliſh reader. In the orthography of *Sanſcrit* words, the ſyſtem adopted by Sir W. JONES has been followed. To obviate the neceſſity of referring to the firſt volume of the Aſiatic Reſearches, where that ſyſtem was propoſed, an explanatory note is ſubjoined. This, with an index, and a few ſcattered annotations, which have been added, may prove ſufficient to aſſiſt the occaſional peruſal of a work intended to diſſeminate a knowledge of Indian law, and, ſerving as a ſtandard for the adminiſtration of juſtice among the *Hindu* ſubjects of *Great Britain*, to advance the happineſs of a numerous people.

H. T. COLEBROOKE.

MIRZAPOOR,
17th December 1796.

NOTE

NOTE

ON THE

ORTHOGRAPHY OF SANSCRIT WORDS.

To obviate the neceſſity of a reference to the firſt volume of the Aſiatic Reſearches, where the ſyſtem of orthography which is here followed was firſt propoſed, I ſubjoin the pronunciation of the letters.

A, E . . . . pronounced as *u* in *ſun*, as *i* in *ſir*, as *e* in *her*. When final, it has a very obſcure ſound, like the *e muet* of the French. The Bengaleſe pronounce this letter as a ſhort *o*.

A' . . . . . as *a* in *call*.

I . . . . . . as *i* in *fit*.

I' . . . . . . as *i* in *machine*, and as *ee* in *ſee*.

U . . . . . . as *u* in *pull*.

U' . . . . . . as *oo* in *pool*.

Rĭ . . . . . . nearly as *ri* in *trip*: more exactly as *ri* in *merrily*.

Rī . . . . . . nearly as *ree* in *tree*.

Lrĭ . . . . . nearly as *lry* in *revelry*. In Bengal this letter expreſſes both ſyllables of the word *lily*.

Lrī . . . . . the ſame prolonged.

E' . . . . . . as the firſt *e* in *there*, and as *ei* in *heir*.

O' . . . . . . as *o* in *go*.

Ai . . . . . . as *i* in *file*. In Bengal it is pronounced like the Greek diphthong in *poimén*, a ſhepherd.

Au . . . . . as *ou* in *thou*.

N & M . . repreſent the naſal ſemivowel, which is an abbreviation of the naſal conſonants at the end of a ſyllable; ſometimes pronounced gutturally, ſometimes labially. Its ſounds are familiar to the French tongue.

H . . . . . . repreſents the aſpirate ſemivowel, an abbreviation or ſubſtitute, at the cloſe of a ſyllable, for the ſtrong aſpirate. It gives intenſity to the ſound of the preceding vowel. The ſhort vowels *a* and *i*, and ſometimes *u*, when final, are ſcarcely perceptible unleſs followed by this element.

C . . . . . . as *c* in *cauſe*, and as *k* in *kill* and *ken*. Uſed before *e* and *i*, it has not the ſound of *ſ* but of *k*.

C'h . . . . . nearly as *ch* in *choler*, *chiromancy*, &c. *Cachexy* perhaps furniſhes a better example of this ſound.

G . . . . . . as *g* in *gain*.

G'h . . . . . nearly as *g-h* in *log-houſe*.

Ṅ . . . . . . as *ng* in *ſing*. It has the ſound which we alſo give to naſals preceding guttural letters, as, *ink*, *bank*, &c.

Ch . . . . . as *ch* in *church*.

Ch'h . . . . nearly as *ch-h* in *much harm*, *rich heir*, &c. if no pauſe be made in pronouncing theſe words.

J . . . . . . as *j* in *joy*.

J'h . . . . . nearly as *dge-h* in *edge-hill*.

Ny . . . . . a peculiar naſal, pronounced before vowels nearly as *ni* in *pannier*, or in *onion*. Before a conſonant it varies little from the ſound of the naſal in *ſinge*. I therefore write it in ſuch inſtances with a ſingle N. The conjunct *jny* is pronounced in the eaſtern provinces as *gy*, or as *g*.

T', T''h, D', D''h . . the ſounds of theſe cerebral letters can only be learned by practice; they are often confounded in pronunciation with a harſh *r*, or with an *l*.

N' . . . . . . a peculiar naſal ſounded high in the roof of the mouth.

T . . . . . . as *t* in *tin* and *ten*.

T'h . . . . . nearly as *t-h* in *hit him*, *white-hall*, &c.

D . . . . . . as *d* in *deal*.

D'h . . . . . nearly as *d-h* in *red hair*.

N . . . . . . as *n* in *noble*.

P . . . . as *p* in *pen*.

P'h . . . . . ſometimes pronounced as *ph* in *philanthropy*; more generally as in *ſhepherd*, *haphazard*, &c.

B . . . . . . as *b* in *bell*.

B'h . . . . . as *b-h* in *abhor*.

M . . . . . . as *m* in *man*.

Y . . . . . . as *y* in *yet*; in the eaſtern provinces it is pronounced as *j*.

R . . . . . . as *r* in *run*.

L . . . . . . as *l* in *lull*.

V, W . . . as *v* in *valve*; ſometimes as *w* in *wind*. In the eaſtern provinces it is confounded with *b*.

S' . . . . . . a peculiar ſibillant, differing from our *s* which is dental, as it is ſounded higher on the palate. It is ſometimes pronounced like *ſh*.

Sh . . . . . . as *ſh* in *ſhip*, but often pronounced as *c'h*, or rather as the Greek χ.

S . . . . as *ſ* in *ſin*.

H . . . . . . the ſtrong breathing, or aſpirate; as *h* in *hair*. The conjunct *hy* is pronounced in the eaſtern provinces like *hj* confounded by the ear with *sj* or *zj*: I cannot well mark this peculiar ſound.

Cſh . . . . . a compound letter pronounced as *ƈti* in *fiction*; but by ſome it is ſounded like *ch*, by others like *c'h*.

CON-

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PART

PART I.

CONTRACTS.

PREFACE

OF

THE COMPILER.

(Originally written in Verſe.)

Having ſaluted the ruler of gods, the lord of beings, and the king of dangers, lord of divine claſſes, the daughter of the king of mountains, the venerable ſages, and the reverend authors of books, I, Jagannát'ha, ſon of Rudra, by command of the protectors of the land, compiled this book,

2. Entitled the ſea of controverſial waves, perſpicuous, diffuſive, with its iſlands and gems, pleaſing to the princes and the learned.

3. What is my intellect, compared with the ſacred code? A feeble bark on a perilous ocean. The favour of the ſupreme ruler is my ſole refuge in traverſing that ocean with this feeble veſſel.

 4. The

4. The learned RÁDHÁCÁNTA, GURUPRESHÁDA of firm and spotleſs mind, RÁMAMÓHANA, RÁMANID'HI, GHANAŚYÁMA, and GANGÁDHARA, a league of aſſiduous pupils, muſt effect the completion of this work, which ſhall gratify the minds of princes: of this I have unqueſtioned certainty.

5. Embarking on ſhips, often do men undaunted traverſe the perilous deep, aided by long cables, and impelled by propitious gales.

6. Having viewed the title of Loans and the reſt, as promulged by wiſe legiſlators in codes of law, and as expounded by former intelligent authors,

7. And having meditated their obſcure paſſages, with the leſſons of venerable teachers, the whole is now delivered by me.

MAHARAJA SERFOJI'S
THE ... MAHAL.

BOOK I.

ON

LOANS AND PAYMENT.

CHAP. I.

ON

LOANS.

SECT. I.—*On Loans in general.*

I.

NÁREDA:—What may, or may not, be lent; by whom, to whom, and in what form; with the rules for delivery and receipt, are held *comprised under the title of* Loans delivered *(rĭnádána)*.

"By whom," as a creditor, a loan may be delivered or advanced; namely, by a mercantile man, and the like. "To whom," as a debtor; meaning, to other persons than women, and the rest. "In what form;" with a pledge previously taken, and so forth. "What may be lent;" the excess above that which ought to be appropriated to the support of the family, and the like. All that *is comprised under the title of Loans delivered.*

Again: "By whom," as a creditor, *a loan* ought not to be delivered or advanced; namely, by a priest, or the like, not subsisting by his own *regular* livelihood. "To whom," as debtors; to women and the rest. "In what form;" meaning clandestinely.

tinely.

tinely. "What may not be lent;" that which only ſuffices for the ſupport of the family, and the like. All that *is compriſed under the ſame title.*

Again: "By whom" a debt ſhould be delivered or paid; namely, by the debtor. "To whom;" to the creditor *himſelf*, not through his wife, or the like. "In what form;" with a writing previouſly executed, and ſo forth. "What ſhould be paid;" a debt contracted by *the party* himſelf, and the like. All that *is compriſed under the preſent title.*

Again: "By whom" a debt need not be paid; by the great-grandſon of the debtor, or his remoter deſcendant. "To whom" *it ſhould not be paid*; to the wife of the creditor, and the like. "In what form;" clandeſtinely. "What" *ſhould not be paid away*; the excluſive property of the wife, and ſo forth. All that *is compriſed under the preſent title.*

"The rules for delivery" *by the creditor;* the rules for advancing a loan on intereſt; namely, what ſort of intereſt may be taken without a breach of duty on the part of the creditor. "And *the rules* for receipt;" the rules for receipt by the creditor at the period of liquidation: thoſe *rules* are the modes of recovery conſonant to moral duty, and the reſt. "The rules for delivery" by the debtor; the rules to be propounded for the diſcharge of debts, ſuch as payment on demand, or the like. "The rules for receipt;" the delivery of ſtipulated intereſt, and ſo forth. All theſe titles of forenſick conteſt are compriſed under the title of Loans and Payment: the particulars will be delivered under their reſpective heads; a little has been mentioned curſorily in this place, to explain the import of the text.

On the reading preferred by BHAVADÉVA and others, *yat'há bhavēt* inſtead of *yat'háchayat*, *the ſenſe is ſimilar:* the loan, which may be advanced, is comprehended under the title of Loan and Payment; this forms one member of the ſentence. So ſuch loans as may not be made, and ſo forth, *are alſo compriſed under the ſame title:* and the terms "loan" and "debt" may be underſtood in the ſecondary ſenſe *of a loan not actually advanced, or a debt not actually contracted.*

According to the *Mitácſhará*, the title of Loan and Payment is ſeven-fold; five-fold in reſpect of the debtor, and two-fold in reſpect of the creditor; namely, *in reſpect of the laſt*, the

rule for delivery, and the rule for receipt. This will be ſubſequently explained*.

But the etymology of the term *rĭnádána* is this: "the complete delivery *(àdàna)* of a loan or debt *(rĭna)*, by whom, where, and to whom *made*:" an appoſition in the form called *bahubríhi*. By the term "complete delivery," *both* the advance and repayment are expreſſed. But, if the thing lent be underſtood, according to the rule, that "neuter derivatives from active words are ſimilar to nouns denoting ſubſtance," the word *rĭnádána* only ſignifies "a loan or debt *(rĭna)* completely delivered *(àdíyamána)*;" being derived in the form of appoſition called *carmad'háraya*. Yet it may be alſo underſtood in the ſenſe reſulting from appoſition in the form called *bahubríhi*, "the complete delivery of a loan or debt, by whom, or in what place made." The application of ſeveral ſenſes to a wordly phraſe, through the ambiguity of terms, is unexceptionable: it is accordingly ſaid, that, "in wordly matters, there is no objection to diſtinguiſh a phraſe according to the diſtinction of inferible meaning:" and theſe, though words of a holy Sage, are ſecular; for they are unconnected with the *Véda*.

In the expreſſion "the loan ought not to be delivered or advanced," the word "loan" bears a ſecondary ſenſe; for it is connected with the ſecondary notion of the requeſt *without the actual advance of the loan*, and ſo forth; and it does not denote what will be mentioned as the defined ſenſe of *loan* or *debt*.

Other lawyers explain the title, "receipt *(àdána)* of a loan *(rĭna)*, by what mode *obtained*;" another appoſition in the form called *bahubríhi*: and the third or cauſal caſe is uſed adjectively; thus the eſſential properties with which the receipt of a loan is connected, are ſeverally titles of Loans received. Thoſe eſſential properties are, the creditorſhip of a *Vaiſya*, or the like; the debtorſhip of others than women, or the like; feneration at the rate of an eightieth part *by the month*, and ſo forth: NÁREDA alſo ſpecifies, as comprehended under the title of Loans, the place where, *or perſon to whom*, the loan is made (I.)

It is ſaid, "may, or may not, be lent;" but what is a loan? The Sage replies to that queſtion:

II.

* See Chap. 5. On Payment of Debts.

II.

NÁREDA :—That contract of delivery and receipt which is made with a view to a gain *by the lender* on the principal ſum while remaining *with the debtor*, is called a loan on intereſt *(cusída)*; and money-lenders acquire their ſubſiſtence by it.

" The principal ſum," literally its continuance : the contract of delivery and receipt is made with a view to gain or increaſe, ſo long only as the principal remains *with the debtor*. Theſe two, *the words* " *delivery*" *and* " *receipt*," are in the paſſive form. The loan is delivered by the creditor with a view to a gain on a durable capital, and is received by the debtor with a ſtipulation to that effect. When it bears no intereſt, then the term " loan" is employed in a ſecondary ſenſe ; *for* a ſubſiſtence is not thereby gained.

A ſecondary notion, or quality, is ſtated, in the fourth lecture of the *Nyáya**, to be that which is neceſſary to the exiſtence affirmed†. That which is given, is received back ; or ſomething of the ſame kind *in its ſtead:* hence, what is advanced for the purpoſes of traffick, is not a loan. VÁCHESPATI MISRA.

" The principal ſum ;" the continuance of the money lent. " A gain ;" the acquiſition of money, or the like. The very loan which is advanced by the owner or *creditor* with a view to that, is received by the uſer or *debtor*. The *Retnácara*.

Conſequently, that property which affords a gain ſtipulated in conſideration of its remaining *for a time* with the debtor, is a loan ; or, that which produces a gain by being advanced to remain with the debtor, is a loan. Such is the definition of *loan*. A full account of this will be delivered in another work.

When intereſt is not borne, the word " loan," or debt, is employed only in a ſecondary ſenſe ; for money-lenders do not acquire their ſubſiſtence by loans without intereſt : and it is employed in a general and ſecondary ſenſe in the phraſe " a loan ſhall

* Treatiſe of GÓTAMA, on Dialectick Philoſophy.

† Eſſential, not adventitious, to the ſubject.

ſhall be given;" and in this, "he who takes the aſſets, ſhall be compelled to pay the debts;" and in other inſtances. 'What is neceſſary to the exiſtence affirmed,' refers to the agreement that "the debt ſhall poſitively be repaid:" and this extends to other things, as *payment* on demand, and the like. Such is MISRA's opinion.

But we maintain this definition: money advanced with a view to the future *revived* property of the creditor, and to his gain by means of intereſt or the like, is a loan; for, even without intereſt, there may be friendſhip gained, or the like. The term is not employed in a ſecondary ſenſe: friendſhip, and the like, are comprehended in the phraſe "the acquiſition of money, or the like."

"The continuance *of the principal ſum*;" its remaining with the debtor, its being unrepaid, and ſo forth. 'So long only as the principal remains;' ſince the term "only" excludes any other ſuppoſition, intereſt is not obtained if the principal ſum be wanting. But, as for what is advanced for the purpoſes of traffick, there is not any non-repayment; for the exact meaning of non-repayment is, that, after the creditor's property has ceaſed *by the act of delivering the thing lent*, neither the thing *itſelf*, which had been his property, is *ultimately* reſtored, nor an equivalent *immediately* given. Or elſe, the advance of the principal may be ſignified by the expreſſion, "ſo long only as the principal remains;" for it ſhows an inſeparable relation*. In traffick, and the like, the employment of a man's own property with a view to gain is acknowledged; not the employment of another's property. According to MISRA, gain conſiſts in the exceſs above the principal held as a man's own property.

But we explain "the principal sum," its continuance, *while it is* held as property by the creditor *in reverſion*, and by the debtor *in poſſeſſion*. "With a view to a gain;" under the term "gain" are comprehended the intereſt received by the creditor, friendſhip *gratified*, duty fulfilled, or the like; it alſo comprehends the debtor's enjoyment of the thing lent, and the like. Hence the expoſition of the *Retnácara*, "the acquiſition of money, or the like:" it is not there ſaid,

* In Logick, *an-waya* and *vyatiréca*; the firſt is the relation of events, of which, whenever one occurs, the other alſo occurs; the ſecond is the connection of circumſtances, of which, when one occurs not, the other alſo does not occur.

ſaid, "received by the debtor," but "received by the uſer;" nor is it clearly ſhown, that the expreſſion, "with a view to gain, ſo long only as the principal remains *with the debtor*," is that form of ſpeech which is named *Saptimí tat puruſha**. It appears, therefore, that a loan or debt is money connected with a gain *allowed* in conſideration of the creditor's property in it; on the notion, that, becauſe the money was the property of that man, therefore the gain is his. Or it may be "money connected with a gain *allowed* in conſideration of the debtor's *temporary* property in it." Or, if the appoſition be thus explained, "with a view to the permanence *of the capital* and to a gain," the permanence of the capital denotes the future revived property of the creditor, and gain ſignifies intereſt *received*, duty *fulfilled*, or the like. Conſequently, the word "loan" is not employed in a ſecondary ſenſe, even where no intereſt is borne; for the phraſe, "money-lenders acquire their ſubſiſtence by it," relates ſolely to loans bearing intereſt; and the tranſactions of commerce, and the like, connect a price with the thing, and a commodity with the purchaſe: it is not cuſtomary in *traffick* to make a diſtinction, "this is the principal ſum, this the increaſe:" therefore a capital ſo employed is not a loan.

It ſhould be here noticed, that, in the firſt place, the borrower aſks for money; next, the lender gives the money, ſaying or thinking, "ſo much intereſt muſt be paid, and the principal ſum be repaid:" property is thereby veſted in the uſer or debtor; for the verb "give" ſignifies an act veſting property in another, after annulling the agent's own property. Hence, if the debtor happen to loſe that money, the loſs does not fall on the creditor; and, *from the ſame cauſe*, the debtor may at pleaſure diſpoſe of what he has borrowed. Afterwards, ſince, by reaſon of the agreement made, the amount of the principal ſum muſt be repaid with intereſt, or an equivalent be given, the creditor's property is *revived* by payment made by the debtor; or if he refuſe to pay it, the debtor commits a ſin, and is liable to puniſhment. Creditorſhip and debtorſhip are diſtinguiſhed by ſome peculiarities;

* Appoſition of terms, where the laſt is chiefly conſidered, and which is reſolvable into the ſeventh caſe. The compound *ſt'hána lábha* has been thus reſolved into *ſt'háné ſatyéva lábha*, gain, only if the capital remain.

ties; the definitions are not therefore identical *: it is the ſame in ſpeaking of undivided brethren, and the like †. The delivery of a loan or debt *(rĭnădăna)* is a phraſe, not a *compound* word. To enlarge would be ſuperfluous.

Is not loan on intereſt *(cusída)*, inſtead of loan *generally (rĭna)*, explained by ſuch a definition? This queſtion is anſwered by the following text.

III.

VRĬHASPATI:—That loan *(rĭna)*, which, increaſed to four times or eight times the principal, is *thus* received back, without apprehenſion of ſin, from an abject or diſtreſſed perſon *(cutſita* and *sída)*, is called a loan on intereſt *(cusída)*.

"From an abject or diſtreſſed *debtor;*" from a debtor who is an outcaſt or otherwiſe abject, or who is indigent or otherwiſe diſtreſſed. What is received back with intereſt from ſuch a debtor without apprehenſion of ſin; without fear of any conſequent ſin (for ſuch receipt is no acceptance of gift *from an unworthy perſon)*. Hence a loan *(rĭna)* is called a loan on intereſt *(cusída)*.

In this inſtance there is only the ſin of diſtreſſing a miſerable perſon; but there is none if his miſery were merely pretended: and even if he were really diſtreſſed, the creditor may confer a benefit by prolonging the term of the loan, or otherwiſe; and ſuch is the practice.

Should the principal ſum only be received back, or ſhould it be received with intereſt? On this point the Sage ſays, "increaſed to four times or eight times the principal." The word "or" is indefinite; it alſo ſuggeſts a debt doubled, or the like. Hence it has been already ſaid, "what is received back with intereſt."

* *Atmáſraya*; identical. Such definitions are faulty; as A ſon of B, and B father of A.

† Apparently liable to a ſimilar objection, that they can only be thus explained: undivided brethren are thoſe who have not made a partition; and divided brethren are thoſe who do not remain in coparcenary.

intereſt." Loans quadrupled, and the like, will be explained under the head of Limits of Intereſt.

Since the words *rĭna* and *cusída*, are uſed ſynonymouſly, the definition of *cusída* is alſo the definition of *rĭna:* and that is made evident by NÁREDA (I & II). The other text (III) only ſhows the verbal derivation of the word *cusída*. This expoſition conforms with the opinion delivered in the *Retnácara*. The definition of the word *rĭna*, which occurs in the firſt text (I), is well delivered by a text of NÁREDA (II), although the term be changed in that text. But the word *cusída* is formed adverbially *(from the particle* cu *and noun* sída).

By whom a loan ſhould be advanced, NÁREDA declares in the concluding part of the text quoted (II); money-lenders acquire their ſubſiſtence by it. The cauſal has the ſenſe of identity; "even that is their livelihood." Or the word ſubſiſtence *(vrĭtti)* in a neuter ſenſe, may ſignify *their mode of* exiſtence. Money-lenders are men of the mercantile claſs; accordingly YÁJNYAWALCYA, in the chapter on Modes of Subſiſtence, ſays,

YÁJNYAWALCYA:—Money-lending, agriculture, traffick, and attendance on cattle, are declared to be *the proper ſubſiſtence* of the mercantile claſs.

"Money-lending;" placing money at intereſt. "Traffick;" living on the profits of purchaſes made at a fair price.

The *Dípacalicà*.

V.

MENU: The king ſhould order each man of the mercantile claſs to practiſe trade, or money-lending, or agriculture and attendance on cattle; and each man of the ſervile claſs to act in the ſervice of the twice-born.

The king ſhould compel a man of the mercantile claſs to practiſe trade, money-lending, agriculture, or attendance on cattle; and a man of the ſervile claſs to act in the ſervice of the twice-born. If they refuſe to do ſo, they ſhould be amerced by

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the king: on that account only it is mentioned in this place (*in the eighth chapter, on Judicature; and on Law, private and criminal*). CULLÚCABHATTA.

The meaning is, that the expreſſion "the king ſhould compel them to practiſe, &c." implies, that they ſhould be amerced if they refuſe to do ſo. But if a *Vaiſya* do not practiſe money-lending through apprehenſions *entertained by him* that the loans will not be ſubſequently repaid, he ſhould not be fined. Since it is declared by MENU, that an *Ambaſht'ha* ſhould live by curing diſorders*; *but ſince men of mingled births may follow the occupation of their mother's claſs*, an *Ambaſht'ha*, adopting the profeſſion of the mercantile claſs, ſhould not be fined if he do not practiſe money-lending. To enlarge on the ſubject of fines, which have been incidentally mentioned, would be ſuperfluous.

For the ſake of conferring benefits and the like, any proprietor of wealth may lend money without intending to obtain intereſt, for that is not prohibited. By thoſe who may practiſe money-lending, a ſmall part only of their wealth ought to be lent: this being incidentally mentioned, BHAVADÉVA cites the *Márcandéya purána*, on the ſubject of what may not be lent.

VI.

Márcandéya Purána:—A prudent man ſhould ſet apart a fourth of his property for *pious uſes with a view to* another world; and apply half to his own ſubſiſtence, and to conſtant and occaſional rites;

2. He ſhould augment the *remaining* fourth of his property, or half of half, making it his capital: the wealth of him, who acts thus, becomes productive.

The meaning is, that the whole property ſhould not be lent: and if the eſtate be ſmall, and the family be barely maintained from

* Chap. 10. V. 47.

from it, in that caſe no loan ſhould be made. Such is the aſcertained ſenſe of the text. But if the means of ſubſiſtence cannot be provided by the purſuit of their own profeſſion, even prieſts may place money at intereſt: this VRĬHASPATI, quoted by BHAVADÉVA, declares.

VII.

VRĬHASPATI:—A twice-born man may practiſe money-lending, agriculture or trade, not conducted in perſon; and even practiſing them in perſon, during ſeaſons of extreme diſtreſs, he is not tainted with ſin.

2. Having received gain, let him honour the progenitors of mankind, the deities and prieſts; when they are ſatisfied, no doubt they deprecate that offence committed by him.

The word 'twice-born' concerns a man of the ſacerdotal claſs; for it is ſaid "he is not tainted with ſin:" if it concerned a man of the commercial claſs, it would be ſuperfluous to ſay, "he is not tainted with ſin;" for it is not ſuppoſed that a man of the commercial claſs ſins by practiſing money-lending. Men of the military claſs may alſo practiſe money-lending, in ſeaſons of diſtreſs; for MENU ſays, "but a *Bráhmana* and a *Cſhatriya*, obliged to ſubſiſt by the acts of a *Vaiſya*, &c.*" If they can ſubſiſt by their regular profeſſion, prieſts ought not to rely on money-lending for a livelihood, ſince a text of MENU declares,

But, among thoſe ſix acts of a *Bráhmana*, *(reading and teaching the* Védas, *ſacrificing and aſſiſting to ſacrifice, giving and accepting,)* three are his means of ſubſiſtence; aſſiſting to ſacrifice, teaching the *Védas*, and receiving gifts from a pure-handed giver†.

And becauſe MENU reprehends the occupation of a *Vaiſya* followed by a *Bráhmana*;

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* Chap. 10. V. 83. † Chap. 10. V. 75.

His own office, though defectively performed, is preferable to that of another, though performed completely; for, he who *without necessity* lives by the acts of another clafs, immediately forfeits his own.

His own office (which fhould regularly be difcharged by him), however defectively it be performed, is preferable to that of another, though fulfilled; becaufe, he who lives by the acts of another clafs, inftantly falls from his own: this inculcates the neceffity of avoiding fuch offences. CULLÚCABHATTA.

Here it fhould be underftood, from the expreffion "he who lives by the acts of another clafs," that fuch a practice, whether in perfon, or not in perfon, is reprehended. It is alfo the opinion of eminent lawyers, that penance muft be performed for exceeding the rate of an eightieth part and the like, by taking greater intereft in a feafon when no diftrefs is experienced. It would be vain to difcufs further the fubject of livelihood.

Money-lending may be alfo practifed by a *'Súdra* in times of diftrefs; for YÁJNYAWALCYA authorizing traffick, and the *Nerafinha purána* authorizing agriculture, which, it may be inferred, are accompanied by money-lending, it is a reafonable induction that money-lending is alfo authorized: and, according to the opinion of VÁCHESPATI MISRA, it appears that a *'Súdra* may receive a gain.

YÁJNYAWALCYA:—A *'Súdra* fhould ferve twice-born men; but if he cannot thus fubfift, he may become a trader.

The *Nerafinha Purána*:—Unafked he fhould give *alms to priefts*, and rely on agriculture for his fubfiftence.

By whom a loan may be made, and by whom it may not be made, have been both curforily explained.

SECT.

Sect. II.—*On the same, and on the Form of the Contract.*

Art. I.—*On the Impropriety of Lending to certain Perſons.*

VIII.

Cátyáyana:—Let no man lend any thing to women, to ſlaves, or to children: whatever thing of value has been lent to them, the lender cannot *in general* recover *without the aſſent of their guardian or maſter.*

Nothing ſhould be lent to women, becauſe they are unable to repay it; for it is recorded, that they have no property excluſively their own (Book II. Chap. iv. V. 56.). May not their debts be repaid by their huſbands? This ſhould not be affirmed, for it is confuted by a text of Yájnyawalcya, which will be quoted. It ſhould be here underſtood, that a widow has property in the wealth ſhe poſſeſſes; but, ſince ſhe is very helpleſs, and only ſupports herſelf on the abundant wealth *before* acquired by her huſband or the like, out of what funds can ſhe repay the loan? From this apprehenſion, nothing ſhould be lent even to widows. But if there be any certainty of repayment, then a loan may be made; for this text is *only* a rule of Ethics: and ſince a loan may be ſubſequently repaid by her ſon, there is no objection againſt a loan made to a woman who has a ſon, whether ſhe be a widow or have a huſband living. Nor do we ſee any objection againſt loans made to women who have ſeparate property, on the mortgage of their immoveable property. A debt contracted by a woman, whoſe huſband is abſent, for her food and apparel, or for the ſupport of her ſervants, muſt be repaid by her lord; and debts contracted by the wives of herdſmen and the like, muſt alſo be repaid by their huſbands: we hold it

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a rational opinion, that there is no objection againſt lending money to thoſe women.

Nothing ſhould be lent to ſlaves, becauſe they alſo are declared to have no property excluſively their own, by the text above quoted. Here a man's own ſlave is meant: he ſhould not therefore lend any thing to his own ſlave; for what that ſlave acquires, belongs to *the maſter* himſelf. This rule may be applicable to ſlaves bought: but why ſhould not loans be made to hired ſervants, for the loans may be repaid out of their wages? Such a doubt ſhould not be entertained: ſince a ſervant only maintains his family with difficulty out of trifling wages, whence can he repay a loan? But there is no objection againſt loans made to ſervants hired on great wages; and the practice *of making ſuch loans* ſubſiſts amongſt excellent perſons.

Neither ſhould a man lend any thing to the ſlave of another, becauſe all his property is dependent on his maſter: if, therefore, a man do lend any thing to the ſlave of another, it cannot be demanded from his maſter. But if the ſlave of any perſon aſk a loan in his maſter's name, and it be aſcertained that he aſks it for the ſupport of his maſter's family, in that caſe a loan may be made; for it is declared by a text of CÁTYÁYANA, that ſuch a debt muſt be diſcharged by his maſter.

IX.

CÁTYÁYANA:—Bhrigu ordained, that a man ſhall pay a debt contracted in his remote abſence, even without his aſſent, by his ſervant, his wife, his mother, his pupil, or his ſon: *provided it were contracted* for the ſubſiſtence of the family.

But when a loan is aſked by a ſervant on his own account, whether he belong to the lender or another perſon, it may be given on the pledge of his wages; this will become evident on the further diſcuſſion of the ſubject: theſe texts will be explained and diſcuſſed in another place; to enlarge would be *now* ſuperfluous.

A youth is a minor to the end of his fiſteenth year, as we ſhall

ſhow in the chapter on the Payment of Debts. *Nothing ſhould be lent* " to children ;" this intends generally any perſon incapable of civil acts, and comprehends idiots and the like. If there be guardians of the minors and the reſt, namely their maternal uncles or the like; and theſe take up a loan from a money-lender, for the benefit of the minor or other ward, executing a deed in the ward's name and their own ; in that caſe the loan may be legally advanced after aſcertaining that the guardian does not act fraudulently: although no text occurs *to this purport*, it is proved by the frequent practice of good men. Afterwards, when the minority expires, the creditor may recover the debt from that youth ; but, while the minority laſts, he could only recover it from the maternal uncle, or other perſon entitled to act *as guardian*. This ſhould be obſerved by the wiſe.

Reverend perſons, as ſpiritual parents and the like, to whom harſh diſcourſe cannot be addreſſed, and who cannot be ſued in the king's courts of juſtice, may be comprehended under this text, by conſidering " Children" as an inſtance adduced of a general meaning. Conſequently, to them alſo nothing ſhould be lent ; but a perſon who poſſeſſes wealth muſt maintain them, elſe he would fail in his duty.

X.

NÁREDA to INDRA, in the *Herivanſa* :—No man, O thou ſubduer of foes, ſhould have pecuniary dealings with him, from whom he deſires much affection, nor viſit *his* wife in his abſence.

" *His*" muſt be ſupplied.—BHAVADÉVA.

" Pecuniary dealings ;" the advance or acceptance of a loan ; it may alſo be underſtood of depoſits and the like. The motive *for avoiding ſuch tranſactions* is the apprehenſion of forfeiting friendſhip. But a diſtinction will be mentioned in another place. It is deduced from the obvious ſenſe of the texts, that a loan may be made to any other perſon except thoſe to whom it is forbidden to lend any thing.

ART.

MAHARAJA SERFOJI'S SARASWATI MAHAL LIBRARY

ART. II.—*On the Contract of Loan.*

XI.

VRĬHASPATI, quoted by BHAVADÉVA, VÁCHESPATI, and CHANDÉSWARA:—A prudent lender ſhould always deliver the thing lent, on receiving a pledge of adequate value, either to be uſed by him, or merely kept in his hands; or with a ſufficient ſurety, and either with a written agreement, or before credible witneſſes.

Any of theſe, by which confidence may be *given to the lender*, ſhould be furniſhed. They are mentioned generally.—MISRA.

The word *here* employed intends comprehenſive illuſtration. If, therefore, the lender have in his power, by bailment or otherwiſe, property of more than adequate value belonging to the borrower, this ſecurity is alſo intended by the text. In like manner, where land belonging to any perſon is taken by another for the purpoſe of tillage, if the landlord aſk a loan of the cultivator, and he advance the loan even without receiving a mortgage of the land, in that caſe, although there be other creditors, the cultivator, and no other creditor, takes the produce of that land until his loan be diſcharged: ſuch is the practice. So, if the huſbandman aſk a loan of his landlord, the landlord, who advances a loan to the huſbandman, and no other creditor, ſeizes the produce of his land, at the time of gathering the harveſt, for the payment of the loan he has advanced: this cuſtom alſo ſubſiſts in this country; and on this point there is alſo the authority of a text of CÁTYÁYANA (CCLXXXI); for there is no objection to conſider land and the like as comprehended, in that text, under the word "capital." This will be diſcuſſed under the head of Payment of Debts: *but* hence *it appears*, *that* land or the like, on which there is ſuch a lien, may be included *in the terms of the text*. So in other caſes alſo; for it only intends ſome ground of confidence in future repayment.

"A pledge of adequate value," by the price or uſe of which

the

the debt may be discharged with interest: such a pledge, whatever it be. It relates both to the pledge to be used, and that to be merely kept in his hands. The use of this condition, *that it should be of adequate value*, is obvious. Both names for a pledge (*ádhi* and *bandha*) are employed by VRĬHASPATI, in a text which will be quoted (LXXX), as bearing the same sense: but here a distinction appears to be intended by the separate mention of them. That distinction, on the concurrent opinions of CHANDÉSWARA, VACHESPATI, BHAVADÉVA and others, is as follows: "*'Adhi*" is a pledge to be used; such as land pledged with its produce; a cow, a female buffalo or the like, with her milk; a tree or the like, with its fruit; an elephant, a horse, an ox or the like, to be used for burden; distinguished by this circumstance, that they are not necessarily impaired by use. "*Bandha*" is a pledge not to be used, but merely kept; as a copper caldron or the like, a mass of iron or ingot of gold and the like; distinguished by this circumstance, that they are, or may be, impaired by use. This will be explained at large in the chapter on Pledges. It may be noticed by the way, that a thing pledged should not be hypothecated by the creditor to another person as security for a debt contracted by himself.

"With a sufficient surety;" with a good sponsor: one by whom the sum can be paid. BHAVADÉVA.

The sufficiency of the surety consists in his power to enforce the punctual payment of the money. CHANDÉSWARA.

By these *glosses* both the surety for the advance, and the surety for repayment, are described. One gives security against the absconding of the debtor; he is surety for appearance, and makes a promise in this form, "I will produce this man." He, in confidence of whose assurance a loan is advanced to any person, is sponsor for honesty; he affirms "this person is unexceptionable." The sufficiency of the first of these consists in his ability to produce the man if he abscond; or, by keeping *in view* the debtor's property, to distrain his effects; and so forth. The sufficiency of the last consists in his skilful judgement of a man's veracity, and so forth. The sufficiency of all *sureties* consists principally in wealth adequate to make good the debt. Accordingly this is actually expressed by BHAVADÉVA. But, in fact, honesty should be considered as a requisite to the sufficiency of a surety;

ſurety; for much time would be waſted in litigation if a diſhoneſt ſurety were accepted. It ſhould be underſtood, that a perſon, ſuch as a ſpiritual parent, from whom money cannot be recovered by harſh importunity and other *compulſory* methods, is not a ſufficient perſon in a matter of ſuretyſhip, however venerable he be. Of this wiſe perſons may judge from the *ſimple* exertion of their own intellect. A text of VRĬHASPATI (CXLII) is authority for diſtinguiſhing four ſureties. That text is explained in the chapter on Sureties.

"With a written agreement" (XI); with a written contract of loan: ſuch a writing is noticed by VRĬHASPATI, cited by BHAVADÉVA.

XII.

VRĬHASPATI:—That mutual inſtrument which is executed when the loan is delivered and accepted, is called the written contract of loan.

The will to make and receive a loan is the cauſe *of the contract*. The conſtruction therefore is, "when the loan is delivered and accepted by the will of the parties reſpectively," &c. What kind of writing ſhould be given, is declared by NÁREDA, quoted in the *Vyavahára-tatwa*.

XIII.

NÁREDA:—Written evidence is declared to be of two ſorts; *the firſt*, in the handwriting of the party himſelf, which need not have ſubſcribing witneſſes; and *the ſecond*, in that of another perſon, which ought to be atteſted: the validity of both depends on the uſage eſtabliſhed in the country.

An inſtrument in the handwriting of the party himſelf is good evidence, even though it be unatteſted; and, in that of another perſon, if atteſted: ſuch is the conſtruction *of the text* by the relative

relative order *of the terms*. "On the ufage of the country;" on fuch ufage, in refpect of writings, as fubfifts in each country: *on that ufage the validity* of both *depends;* namely of an inftrument in the handwriting of the party himfelf, and of one in the handwriting of another perfon. The *Vyavahára-tatwa.*

"Even though it be unattefted:" this expreffion fuggefts, that an attefted inftrument *in the handwriting of the party* is alfo included, *under this text*, as a valid document. Thus the fenfe is, that any attefted writing is good evidence; and one in the handwriting of the party himfelf is good evidence, even though it be unattefted. But, in fact, it is the practice of our country to call to witnefs the divine form of juftice (*Srí* DHERMA) on fuch writings. An inftrument in the handwriting of another perfon ought to be attefted; and there the witnefs fhould be human: but even to fuch writings it is ufual to atteft the divine form of juftice. However, fhould the party deny an inftrument in the handwriting of another, and to which the name of juftice is fubfcribed as *fole* witnefs, how can the judge's doubts be fatisfied? The ingenuous evidence of witneffes fhould therefore be adduced to prove an inftrument drawn in the handwriting of another perfon.

Is not the fcribe himfelf fuch *competent* evidence? This fhould not be objected; for YÁJNYAWALCYA declares dubious the evidence of lefs than three witneffes: *and properly* thefe witneffes fhould be of the fame clafs with the party; but, if that cannot be, they may be of other claffes.

XIV.

YÁJNYAWALCYA:—There fhould *in general* be three witneffes; perfons who take delight in acts ordained in the *Véda* and in facred law books; and properly, they fhould be of the fame fex and clafs with the party for whom they give evidence: but, if that cannot be, thofe of all claffes may be examined*.

Here

* The firft and laft parts only of this text were cited; I quote it at large from other Digefts.

Here it ſhould be noticed, that atteſted writings only ought to be given; for, *although* YÁJNYAWALCYA (XV) declares an unatteſted inſtrument in the handwriting of the party himſelf ſufficient evidence, yet he alſo declares it to have no validity if it were obtained by force or fraud: when, therefore, a judicial proceeding is ſubſequently held, ſhould the defendant plead that it was obtained by force or fraud, then the arbitrators and the king may doubt its validity. For this reaſon a writing, which has ſubſcribing witneſſes, is preferable.

XV.

YÁJNYAWALCYA:—But every document which is in the handwriting of the party himſelf, is conſidered as ſufficient evidence even without witneſſes, unleſs obtained by force or fraud.

"*Upadhi*" *here* ſignifies fraud.

'Such uſage, in reſpect of writings, as ſubſiſts in each country*.' In ſome countries the practice is as follows: After an auſpicious term (*as* Srì), preceded by an epithet alluſive to memory (*as* ſmaranasíla), the name of the lender is written in the ſeventh caſe and plural number; and the name of the borrower is inſerted with the termination of the ſixth caſe before the word "uſer" *or borrower* (*C'hádaca.*) Next, the word "*Caſya*" is written: after which a word expreſſive of bond or obligation for debt is inſerted, and declared by the word "this" ſubjoined. Next, the meaning of the parties is ſtated, the ſtipulation of intereſt, the promiſe of payment, and a binding clauſe; then, after dating the inſtrument by the ſolar month and day, the debtor's name is again written, with the termination of the ſixth caſe, on the right hand ſide *of the paper*; and the deſignation of place is added. The names of the witneſſes are written on the back of the inſtrument. "The uſage eſtabliſhed in the country" intends this and other forms. Whatever be the uſage in each country, that only ſhould be obſerved in that country: and the practice above ſtated is almoſt *literally* directed by YÁJNYA-

 WALCYA:

* Comment cited from the *Vyavàhara-tatwa* on V. 13.

WALCYA: for he ſuggeſts, that the lender's name ſhould be firſt written, and that the inſtrument ſhould be dated by the year, month, and day.

XVI.

YÁJNYAWALCYA:—Whatever contract ſhall have been concluded by mutual conſent, a written memorial of it ſhould be atteſted, after the lender's name has been firſt inſerted:

2. It ſhould bear the year, month, half month, and day, with the deſignation *of the debtor*, by his name, claſs, and the like*.

The epithet alluſive to memory is ſuggeſted by a text of MENU. It conveys, that this *inſtrument* is written for the ſake of *aſſiſting* memory.

XVII.

MENU:—Even in the ſpace of ſix months men forget occurrences: therefore were letters and writings anciently invented by the beneficent Creator.

By the cuſtom of the country, inſtruments are *now* written in the dialect of the *Yavanas*†; but among eminent *Bráhmanas* and others, writings are alſo drawn in another language. In ſome written contracts for auſpicious rites, as marriage and the like, the word "*ſwaſti*" is firſt written: its intent is *a prayer*; may this rite be auſpicious! This is noticed by the way.

XVIII.

YÁJNYAWALCYA:—When the tranſaction is completed,

* The firſt hemiſtich is not here cited. I inſert it from a ſubſequent quotation in Book V, collated with the code of YA'JNYAWALCYA.

† The Muſlemáns.

pleted, the borrower ſhould ſign his name with his own hand; *adding*, "what is above written has the aſſent of me, ſon of ſuch a one."

This ſuggeſts, that the debtor's name ſhould be written above the contract. We do not determine whether additional matter, as titles and the like, and omiſſions, as leaving out the name of the party's father or the like, be founded on practice, or on the reaſon of the law, or, *in the laſt inſtance*, originate in indolence.

"Half a month" (XVI); a ſide *of the month, that is "a fortnight.*" "By his name;" by the name of the debtor. "His claſs;" the ſacerdotal or other claſs. "And the like;" the *Véda which he follows in ſolemn rites*, and ſo forth.

XIX.

Yájnyawalcya declares the form of atteſtation:—And the witneſſes ſhould ſign *their names* all together in their own handwriting, after writing the name of their fathers and ſo forth; *adding*, "I, ſon of ſuch a one, am witneſs to this *writing*."

Here it is, in ſubſtance, expreſſed, that the omiſſion of the name of the witneſs's father is founded only on uſage. If the inſtrument be in the handwriting of another perſon, the writer of it ſhould add at the bottom of that inſtrument, "written, at the requeſt of both parties, by me, ſuch a one, ſon of ſuch a one."

XX.

Yájnyawalcya:—Let the writer next ſubſcribe, at the end *of the writing*, "this *has been* written, at the requeſt of both *parties*, by me, ſuch a one, ſon of ſuch a one."

But the practice is for the ſcribe merely to ſign his name with the letters बक्म, (*ſtanding for* بقلم). All this is *only* mentioned

tioned to obviate the ſuppoſition, that the *forms of* writings, which occur in practice, are not directed by Sages.

If the debtor, or a witneſs, be illiterate, the following text directs the form to be obſerved in that caſe.

XXI.

Vyása :—But a borrower, who is unlettered, ſhould direct another perſon to ſubſcribe his *declaration of* aſſent; or a witneſs, *in the ſame predicament, ſhould cauſe his name to be ſigned* by another witneſs, in the preſence of all the witneſſes.

When theſe and other local uſages are obſerved, then an inſtrument in the handwriting of the party himſelf, and one in the handwriting of another perſon, are valid, and good evidence *of contracts*. Such is the meaning of the Sage, as expounded by authors. But in fact all this ſhould be conſidered as intending ſuch a document as may remove the doubts entertained by honeſt arbitrators or by the king. Elſe, if all *the parties*, the borrower, the lender, the witneſſes, and the writer, be unacquainted with the forms of writings, and a creditor could not recover a debt, though really lent, notwithſtanding the exiſtence of an atteſted writing in any irregular form, there would be a failure of juſtice on the part of the king. Again; if the inſtrument were not ſubſcribed by witneſſes, but it be ſaid by a witneſs, " I know this inſtrument," and the inſtrument be admitted in evidence by the arbitrators on any arguments, it is an atteſted inſtrument. This is mentioned by the way; the reſt may be learnt under the title of Judicial Procedure: but ſomething has been ſaid, in this place, to make known the ſort of writing, by which a monied man, who advances a loan, may be ſecure from loſing his cauſe, ſhould a diſpute afterwards ariſe. This we deem reaſonable.

"Before credible witneſſes" (XI): this is another caſe of written agreements; for the preſence of witneſſes is ſuggeſted by the form for drawing written contracts; and the ſenſe of the text appears to be this: He ſhould advance a loan, on receiving a pledge to be uſed by him, together with a written agreement: this

is one caſe. He ſhould advance it on receiving ſuch a pledge before credible witneſſes: this forms a ſecond caſe. So likewiſe a loan made on a pledge to be merely kept in his hands, forms two caſes *(according as it is tranſacted by a written agreement, or before credible witneſſes)*; hence ariſe four caſes. Again; two caſes ariſe alſo on loans made with a ſufficient ſurety; and the poſſible caſes are ſix in number. Alluding to this, MISRA has ſaid; "any of theſe, by which confidence may be *given*, ſhould be furniſhed." Conſequently any one of theſe ſix modes, by which confidence may be given to the lender, ſhould be adopted. Here a pledge to be uſed, or merely kept, as well as a ſurety, are intended to give confidence to the lender; and the writing and witneſſes, to prove the truth of the loan, if a judicial proceeding be held at a ſubſequent time.

XXII.

NÁREDA:—In this *contract* there are two things which give confidence *to the lender*, a pledge and a ſurety; and two which afford clear evidence, a writing and atteſtation.

"Confidence;" aſſured expectation of thereafter receiving the loan advanced: in ſome inſtances a ſurety, in others a pledge, *give ſuch confidence*; for this coincides with the former text (XI). But here the word pledge (*ádhi*) ſignifies both a pledge to be uſed and one to be kept. "Clear evidence;" certain proof; ſometimes a writing, ſometimes atteſtation, ſometimes both, are required, according to circumſtances, for the ſake of proof in caſe of diſpute.

It ſhould be here noticed, that both texts (XI and XXII) are ethical precepts; for they exhibit cauſes of preſent evil. If, therefore, infringing theſe rules, a man deliver a loan without a pledge, or writing, or the like, he violates not his duty: and if the debt be anyhow proved, the debtor ſhall be compelled by the king to repay it to his creditor. Hence the practice of advancing loans without pledge or writing, in ſome inſtances of extreme confidence. But exceſſive confidence ſhould be no-where repoſed;

reposed; for the *Herivansa* directs, "Place not confidence in what is unworthy of confidence, nor excessive confidence *even* in what is worthy of confidence:" and the adage expresses "mutable mind, mutable wealth."

In like manner the texts of CATYÁYANA and NÁREDA* (VIII and X) are ethical precepts; for the text points out a present evil, "the lender cannot *in general* recover, &c." Consequently there is no breach of duty in lending any thing even to women; on the contrary, it is a duty to support unprotected persons, even though it be done by advancing loans: and if the debtor be able to discharge it, the king should enforce payment of such a debt. But a man who infringes the rule, and institutes a suit *on such a debt*, incurs censure. To enlarge would be vain.

Thus a loan should not be advanced *by a money-lender*, without confidence and means of proof: and the meaning of the phrase, "in what form a loan should not be made," becomes evident.

* It is not expressed in the original, which is the second text alluded to; I supply it from conjecture.

CHAP.

TANJORE MAHARAJA SERFOJI'S SARASVATI MAHAL.

CHAP. II.

ON

INTEREST.

SECT. I.—*On Legal Interest in general.*

SUCH intereſt, as may be taken without a breach of duty on the part of the creditor, is a rule *(dherma)* for delivery *by the creditor.* Or the nature of a thing may be ſignified by the word *dherma*: as it is the nature of robbers to hurt living creatures, ſo it is the nature of a loan, that it ſhould produce to the lender the principal ſum advanced, and intereſt in addition thereto. Thus intereſt is ſignified by the term "rule for delivery." MENU propounds that intereſt.

XXIII.

MENU:– A lender *of money* may take, in addition to his capital, the intereſt allowed by VAŚISHT'HA, an eightieth part of a hundred by the month.

"Allowed *or declared* by VAŚISHT'HA;" this ſhows that it has been authorized by VAŚISHT'HA. Thus, ſuch intereſt is allowed by all Sages, and is therefore legal: by taking it, a man does not violate his duty. "In addition to his capital;" actually increaſing the creditor's capital, or calculated to do ſo: *ſuch intereſt* he may require. But if it be explained, "increaſing the debtor's capital," *the ſenſe is,* through the medium of moral worth: by diſcharging the debt with intereſt, immoral conduct is avoided, and increaſe of moral worth attained; hence wealth is *alſo* increaſed. The purport is, that the money-lender may actually receive ſuch intereſt; for CULLÚCABHATTA expounds it, "one who ſubſiſts by intereſt, may take, &c." It might alſo ſignify,

ſignify, " a loan may produce the intereſt allowed by VAŚISHT'HA, &c." and it is alſo expounded, " a borrower may pay the intereſt allowed by VAŚISHT'HA."

What is that intereſt? The Sage propounds it; " an eightieth part of a hundred by the month." The principal ſhould therefore be divided into eighty parts; and ſo much as is the quantity of one part, he may take in the ſame kind of wealth by way of intereſt, in addition to the principal: if, therefore, a loan, amounting to one hundred *ſuvernas*, be divided into eighty parts, one part contains a *ſuverna* and a quarter; and the intereſt in this caſe is one *ſuverna* and a quarter. " By the month;" at the end of the month.

It is ſaid by ſome lawyers, that, a hundred being ſpecified in the text, an eightieth part is the rate of intereſt then only when the loan amounts to a hundred: hence it appears, that the rate of intereſt varies when the loan is more or leſs; and ſuch a practice is obſervable in ſome countries. On this we remark, that no ſpecial rate of intereſt for loans exceeding a hundred, or falling ſhort of a hundred, has been recorded by any Sage. MENU has not ſpecified whether it be a hundred ſhells or a hundred *ſuvernas*; and we ſhall explain, in its proper place, the text of HÁRÍTA (XXX) as intending the rate of two in a hundred. But here we conſider " a hundred " as a mere example; the rate is the ſame on leſs ſums. VAŚISHT'HA expreſsly declares the rate of an eightieth part on leſs than a hundred.

XXIV.

VAŚISHT'HA:—Hear the intereſt for a money-lender declared by the words of VAŚISHT'HA: five *máſhas*, *or one ſuverna* for twenty *palas, or eighty ſuvernas,* he may claim *and ſhould receive* each month: thus the law is not violated.

XXV.

GÓTAMA:—The legal intereſt for twenty *palas* is five *máſhas* a month.

On

On this ſome remark, that the *máſha* is declared by Menu to contain five *criſhnalas* or *racticás*, ("five *criſhnalas* are one *máſha*, and ſixteen ſuch *máſhas* one *ſuverna*;") and the ſame *máſha* is thus explained by Amera, "the firſt *máſha* contains five ſeeds of the *gunjá*." Conſequently five *máſhas* are equal to twenty-five *racticás*; and this is the rate of intereſt on a loan amounting to twenty: ſuch is the aſcertained ſenſe. On the queſtion, "twenty of what denomination?" the *ſuverna*, which is mentioned after ſtating the quantity of a *máſha*, both in the text of Menu and in that of Yajnyawalcya, ſhould be taken, ("five ſuch *criſhnalas* are a *máſha*, and ſixteen ſuch *máſhas* a *ſuverna*;") for five *máſhas* can only be the intereſt on twenty ſuch *ſuvernas*. Thus a *ſuverna*, conſiſting of ſixteen *máſhas*, contains eighty *racticás*; its eightieth part is one *racticá*, and the eightieth part of twenty *ſuvernas* is twenty *racticás*. Twenty-five *racticás* are intended by the rate of five *máſhas* (XXIV and XXV). Conſequently an eightieth part is only the rate of intereſt on a debt amounting to a hundred *ſuvernas*; but on a ſmaller debt, the rate of intereſt is higher. This is intended by Vaśisht'ha and Gótama; and ſuch, it may be argued, is the legal rate on fifty or ſixty *ſuvernas*, or the like, and practice is obſerved to conform thereto. How then is it ſaid, 'the rate of intereſt *on leſs ſums* has not been recorded by any Sage?' And why is it ſaid, 'Vaśisht'ha expreſsly declares the rate of an eightieth part on leſs than a hundred?'

The anſwer is this: Menu, after ſaying "a lender of money may take the intereſt allowed by Vaśisht'ha," adds, "an eightieth part of an hundred." Since it is thence inferred, that Vaśisht'ha has propounded the rate of an eightieth part, his text muſt be ſo explained as to ſtate an eightieth part. That expoſition on the text of Menu, which makes the intereſt allowed by Vaśisht'ha one caſe, and an eightieth part of a hundred another caſe, is not approved by Cullúcabhatta. Therefore, the interpretation approved by Chandéswara, Bhavadéva, Váchespati Misra, and others, ſhould be admitted, as follows. In theſe texts twenty *palas* are intended; and the *pala* ſhould be taken at four *ſuvernas*, as ſtated by Menu and Yájnyawalcya. Twenty *palas*, therefore, are equal to eighty *ſuvernas*; and the eightieth part of that ſum, or one *ſuverna*,

verna, is the monthly intereſt. But here *máſhas* are mentioned. This apparent incongruity is thus reconciled: the *máſha*, containing five *crĭſhnalas*, as ſtated by MENU and YÁJNYAWALCYA, muſt not be taken (for it is not applicable); but the *máſha* ſtated by VRĬHASPATI, as quoted in the *Retnácara* and *Chintámeni*, "a *máſha* is conſidered as the twentieth part of a *pala*." Thus the twentieth part of a *ſuverna*, containing eighty *racticás*, is equal to four *racticás*; and the twentieth part of a *pala*, containing four *ſuvernas*, is certainly equal to ſixteen *racticás*, and thoſe make one *máſha*; five of theſe are equal to eighty *racticás*, or one *ſuverna*. Thus there is no inconſiſtency. Here *ſuverna* is of the maſculine gender; for it is ſo employed by MENU and YÁJNYAWALCYA, and is ſo exhibited in the ſame ſenſe by AMERA; but, in the ſenſe of gold generally, it is of the neuter gender, for AMERA ſo exhibits it in this ſenſe.

The ſame ſhould be alſo underſtood of other things. The monthly intereſt on a *purána* is thus explained: A *pana* conſiſts of eighty ſhells, and a *pana* is the quantity of a *carſha* of copper, as mentioned by MENU; "but a *carſha* (or eighty *racticás*) of copper is called a *pana*." The *carſha* is the fourth part of a legal *pala*; hence expoſitors ſay, a *pala* contains four *carſhas*. Conſequently the weight of eighty *racticás* of copper is a *pana*; on this ground, the Ancients eſtabliſhed it *alſo* at the value of eighty ſhells: accordingly it is familiar in practice, that eighty ſhells make a *pana*. A *purána* contains ſixteen *panas*, according to the *Retnácara*; and *purána* is alſo practically noticed, for ſixteen *panas* of ſhells, in penances and expiations, and on other occaſions. Now the eighteenth part of a *pana* is one ſhell; of a *purána*, ſixteen ſhells; of a hundred *panas*, a hundred ſhells, or one *pana* and a quarter; of a hundred *puránas*, ſixteen hundred ſhells, or twenty *panas*. Or if the money be in ſilver coins ſtamped with legends, the intereſt on a hundred ſuch coins is one coin and a quarter: for, on eighty pieces, it is one piece; and, on twenty pieces, a quarter; which, added together, make one piece and a quarter. But, if the principal be a ſingle piece of money, the rate muſt be ſettled by its value. If its value be four *puránas*, then ſixty-four ſhells are its eightieth part; and ſo in all caſes.

Again: If the debt conſiſt of kine, or the like, the intereſt ſhould

ſhould be ſettled on the value. It ſhould not be affirmed, that they cannot conſtitute a debt; for the limit of intereſt on cattle is mentioned (LXV.) Why ſuch a practice does not occur, we know not. Something, however, may be mentioned to explain the *received* diſtinctions *in theſe caſes*. If a man happen to deliver a cow, or the like, as a loan, the intereſt may be received on her value; *but* a great offence is committed; for the ſale of a cow is forbidden in moral law: however, a goat, a calf, or the like, may be taken by way of intereſt, without any offence on the part of the receiver; and the debt ſhould be diſcharged by returning the thing itſelf, or ſomething of the ſame nature; as already ſtated by MISRA. But, in this caſe, it ſhould be returned unblemiſhed; or another cow, or the like, or other thing of equal value, ſhould be delivered. Whatever it is forbidden to ſell and give away, ſhould not be delivered as a loan; for the offence is equal. But a *Bráhmana* may advance lac, ſalt, or the like, by way of loan; for there is no more offence in lending, than in giving thoſe things; and the offence is reſtricted to the ſale of ſuch things: however, at the time of repayment, the value of the ſalt, or the like, and of intereſt accruing on it, ſhould not be received; for *that would equal* the offence of ſelling it. The intereſt ſhould be of the ſame nature with the thing lent; for intereſt is propounded at the eightieth part of the thing lent.

To revert to the explanation of both texts (XXIV and XXV); the inſtitutes of VAS̒ISHT'HA and others were compoſed by their pupils, who heard the purport of what they record, from the mouth of VAS̒ISHT'HA and the reſt: hence it is ſaid (XXIV), "declared by the words of VAS̒ISHT'HA;" as in the ordinances of MENU, it is ſaid, "MENU ordained."

"Legal," in the text of GÓTAMA (XXV), ſignifies juſtifiable in law, that is, not illegal; for it coincides with the expreſſion in the text of VAS̒ISHT'HA, "thus the law is not violated" (XXIV.) Or the ſenſe may be this; he who takes intereſt allowed by codes of law, which may produce religious merit by means of pious oblations made therefrom to Deities and *Bráhmanas*, and ſo forth, has the complete benefit thereof, if he actually do make ſuch oblations to deities and prieſts; not ſo he who celebrates rites with wealth acquired by theft or by other nefarious means. As is declared by

MENU:—Neither a prieſt nor a military man, *though diſtreſſed,* must receive intereſt on loans; but each of them, if he pleaſe, may pay *the* ſmall intereſt *permitted by law, on borrowing* for ſome pious uſe, to the ſinful man, *who demands it**.

Which is expounded by CULLÚCABHATTA, "may advance *a loan* on ſmall intereſt, for ſome pious uſe."

"Legal intereſt" (XXV); intereſt authorized by law, at the rate of five *máſhas* for twenty *palas*. The *Retnácara.*

We expound the text (XXV), "the quantity of five *máſhas* is the intereſt for twenty *palas*," or intereſt appertaining to twenty *palas (ſupplying the word* "*pala*" by a ſecondary ſenſe *of* "*twenty*"); that intereſt accrues on a ſum of twenty *palas*. But ſome read "twenty" in the fifth or ſixth caſe (vinſatéh *inſtead of* vinſatíh). That is wrong, for it is not approved in the *Retnácara.* The ſenſe, according to regular conſtruction, is thus: "the quantity of five *máſhas*, as intereſt appertaining to twenty *palas*, is legal."

"A month;" here "*for*" muſt be ſupplied. In every text where "month" is not ſpecified, but intereſt at the rate of an eightieth part, or the like, is mentioned, the word "month" muſt be underſtood: and the month is according to *ſávana* time, conſiſting of thirty days and nights; not the *ſaura* month from the ſun's departure from one ſign to his departure from another ſign. For RAGHUNANDANA, in commenting on texts quoted in the *Mala máſa tatwa*, ("certain ſacrifices and acts of devotion are to be regulated by *ſávana*† time; ſo is impurity after child-birth, and the like; and ſo are all popular and forenſick tranſactions") ſays, that under the term "and the like," wages, intereſt, and the like, ſhould be comprehended. Hence it is inconſiſtent with law to regulate civil contracts by *ſaura* or ſolar time. It would be a great diſparity, were *a whole month's* intereſt, at the rate of an eightieth part, or the like, paid upon a loan taken on the laſt day of the ſun's paſſage through one ſign, and

* Chap. 10. v. 117. I do not alter the tranſlation, which conforms to the literal ſenſe of the text, though it conſiſt not with the comment and the purpoſe of the quotation. See Book II. chap. 4. v. 23.

† VYÁSA in the *Viſhnu-dhermóttara.*

and repaid on the following day; and no intereſt paid on a debt contracted on the firſt day *of the ſolar month*, and diſcharged on the laſt day of the ſame month. This ſhould be determined by the wiſe.

Here intereſt for one month is declared by Sages to be the eightieth part *of the principal*; but if the period exceed one month, the ſame rate is directed for each month: ſince the expreſſion implies repetition, it follows, that the intereſt ſhall be an eightieth part for every month reſpectively: and if the period be leſs than a month, it appears that the intereſt ſhould be computed by a ſubdiviſion of that rate; elſe a diſparity would ariſe, no intereſt being payable on a debt diſcharged within one day of a complete month.

A greater or leſs fine, or other *deciſion*, ſhould not be regulated by very minute diſtinctions.

But ſome attend in practice even to minute variations in fines, *and the like*.

XXVI.

VRĬHASPATI, quoted in the *Retnácara*:—The eightieth part accrues *monthly on the principal;* and if *the intereſt be* received, the *loan* is doubtleſs doubled in a third *of a year* leſs than ſeven years; *that is,* in *ſix years and eight months.*

"Accrues;" it is the intereſt for each month. If the intereſt be received, the loan advanced is doubled. Or the ſeventh caſe may be here uſed in the ſenſe of the third, "the debt is doubled by accumulation of intereſt." In what time? The Sage replies to this queſtion, "in a third of a year leſs than ſeven years." Divide a year of twelve months into three parts; each part contains four months; that deducted from ſeven years, leaves ſix years and eight months. Thus, if the debt amount to one hundred *ſuvernas*, the monthly intereſt is one *ſuverna* and a quarter; the annual intereſt is twelve *ſuvernas* and twelve quarters, or fif-

teen *ſuvernas*; the intereſt in three years amounts to forty-five *ſuvernas*; in ſix years to twice that ſum, or ninety *ſuvernas*: intereſt for eight months is eight *ſuvernas* and eight quarters, or ten *ſuvernas*; which, added to ninety *ſuvernas*, make a hundred, or the ſame amount with the original debt: conſequently, added to the principal ſum, it doubles it. This is mentioned by VRĬHASPATI, to prohibit further intereſt, after a loan in gold, ſilver, or the like, has been doubled by intereſt. This will become evident under the title of Limited Intereſt.

This rate of intereſt is ordained, if a pledge be given; VYÁSA propounds a diſtinction if a ſurety be given without a pledge, or if neither be given.

XXVII.

VYÁSA:—Monthly intereſt is declared to be an eightieth part of the principal, if a pledge be given; an eighth part is added, if there be *only* a ſurety; and if there be neither pledge nor ſurety, two in the hundred *may be taken from a debtor of the ſacerdotal claſs.*

"An eightieth part;" the eightieth. The *Retnácara.*

That is, one part in eighty parts. Here a pledge intends a pledge to be kept; for, in a gloſs on the text previouſly quoted from MENU (XXIII) to the ſame purport with this text, the *Retnácara* ſtates, "this concerns a pledge to be merely kept." The meaning is this—In the caſe of a pledge to be uſed, ſince the uſe of the pledge is the only intereſt, the rate of an eightieth, or the like, is inapplicable: all this will be explained under the title of Various Sorts of Intereſt.

A pledge to be kept, is one which would be impaired by uſe; a pledge to be uſed, is one which is not *neceſſarily* impaired by uſe. Here it ſhould be noticed, that if a man contract a debt, mortgaging land, or the like, to be uſed, and ſay, "the uſe of the land ſhall be the only intereſt," in that caſe, ſince there is no other intereſt but the uſe of the pledge, the rate of an eightieth part, or the like, is inapplicable. But if he ſay, "this land is

 mortgaged

mortgaged to you ; paying your intereſt from its produce, I ſhall diſcharge the principal from the ſurplus ; or, if the produce be inſufficient, I will make good the intereſt, delivering either money or goods ;" in that caſe the rate of an eightieth part is applicable even to a pledge to be uſed.

Is it not the law, that, when land or the like is pledged, the entire uſe of it ſhould of courſe be taken by way of intereſt ? On the contrary, uſufruct in exceſs is reprehended by a text, which will be quoted from VRÍHASPATI (XXXV 7). It ſhould not be argued, that a pledge delivered for uſe is a pledge to be uſed, and one delivered merely for ſecurity is a pledge to be kept. The forfeiture of the whole intereſt will be denounced againſt the unauthorized uſe of a pledge to be kept ; and the forfeiture of half the intereſt, againſt the unauthorized uſe of a pledge to be uſed. It is ſaid in the *Dípacalicà*, " if a pledge to be kept, that is, one which ſhould be ſecurely preſerved, as clothes, ornaments, and the like, be uſed, no intereſt *ſhall be received*." It is not ſaid, " a pledge to be kept, that is, one not delivered for uſe ;" but, " *a pledge to be preſerved*, as clothes, ornaments, and the like." The proper place for this diſquiſition is the chapter on Pledges. Since many texts are there cited, to expatiate in this place would be idle.

" An eighth part is added " (XXVII) ; and that is an eighth part added to an eightieth part. Hence, two *panas* leſs than two *purànas*, *or one* purána *and fourteen* panas, are received, if there be only a ſurety. The *Retnácara*.

In that book, a debt amounting to one hundred *puránas* had been already ſuppoſed : hence, in this caſe alſo, the rate of intereſt denoted is two *panas* leſs than two *puránas* on a hundred *puránas*. But, in the gloſs on this text, the letter M is an error of the pen, (aśítyaſhtamabhágaſahita *inſtead of* aśítyaſhtabhágaſahita,) for the text exhibits *ſáſhtábhága* with eight parts. Conſequently the ſenſe is *an eightieth part* joined to eight parts, and the portion not ſpecified muſt be a ſixteenth on the authority of uſage. Thus, whatever be the amount of an eightieth part, eight parts are half of that amount. But, in this caſe, an eightieth part is twenty *panas*, and theſe, added to half that amount, make thirty *panas*, or two *panas* leſs than two *puránas*.

But ſome, noticing another reading in the commentary on

YÁJNYAWALCYA, *ſhaſht'hibhága*, inſtead of *ſáſhtabhága*, ſay, the intereſt ſhould be a ſixtieth part, if there be only a ſurety: and this, they ſay, is fit. If there be neither pledge nor ſurety, the intereſt is two *puránas* for a hundred *puránas*, as ordained by the text (XXVII). If a pledge be given, twenty *panas* are the intereſt preſcribed. But in this caſe, a pledge having been given, the confidence is greater; for a chattel of equal value is in the creditor's power. If there be neither pledge nor ſurety, no confidence exiſts; for payment reſts on the will of the debtor: in this laſt caſe, therefore, the intereſt, ordained by ſages for a hundred *puránas*, is greater by twelve *panas*: and this is conſiſtent with the reaſon of the law. Now, if there be only a ſurety, confidence is given, but there is a poſſibility of trouble. For inſtance; a man advances a loan on this conſideration, "if my debtor do not repay the loan, even then I ſhall ſubſequently recover it from his ſurety by a ſuit at law;" in that caſe trouble *may be apprehended*, for the recovery is effected by the trouble of litigation. It is therefore proper, in ſuch a caſe, to take, in addition to the twenty *panas* allowed, where a pledge is given, ſix *panas*, or half the additional twelve *panas* allowed *on loans without ſecurity*. Now this nearly agrees *with the rate of a ſixtieth part*. In dividing a hundred *puránas* into ſixty parts, firſt take one *purána* for each part; this diſpoſes of ſixty *puránas*, and forty *puránas* remain. Again, ſet half a *purána* towards each part, thirty *puránas* are diſpoſed of, and ten *puránas* remain; and each part is one *purána* and a half, *with a further fraction from the remainder*. Reduce the ten *puránas* into *panas*; the reſult is a hundred and ſixty *panas*: ſetting two *panas* to each part, the portions amount to one *purána* and ten *panas*; a hundred and twenty *panas* are diſpoſed of, and forty *panas* remain. Again, ſet half a *pana* to each portion; thirty *panas* are diſpoſed of; the ſixtieth part amounts to one *purána* and ten *panas* and a half, *with a further fraction*; and there remain ten *panas*, or eight hundred *cauries*. Diſtribute thirteen *cauries* to each ſhare, ſeven hundred and eighty *cauries* are diſpoſed of; and the ſixtieth part of a hundred *puránas* amounts to one *purána* ten *panas* and fifty-three ſhells, with a fraction of one third from the remaining twenty ſhells, which may be *more accurately* divided by thoſe who are ſkilled in the notation taught by 'SUBHANCARA. The amount

amount of fifty-three ſhells and a third is, they ſay, but a ſmall exceſs above the rate of intereſt, which, in their opinion, is reaſonable; neglecting, therefore, minute differences, intereſt may be taken at the rate ordained by the ſage, namely a ſixtieth of the principal, if there be only a ſurety:

VÁCHESPATI MISRA, not acquieſcing in either of theſe interpretations, expounds the text otherwiſe in his Digeſt. "An eighth part is added;" the eighth part of an eightieth part is added to an eightieth part. Hence the intereſt on the ſum of twenty *palas* of gold, is ninety *racticás*. His meaning is this; *ſáſhtabhága* ſignifies joined to one part in eight parts. *The anſwer* to the queſtion, "part of what?" *is drawn* from the neareſt term, "*an eighth part* of an eightieth." Thus, an eightieth being divided into eight parts, one ſuch part is added. But the intereſt at an eightieth part of the principal, is aſcertained in the caſe propoſed; the eightieth part of twenty *palas*, or eighty *ſuvernas*, is equal to eighty *racticás*, or one *ſuverna*; to which the eighth part of it, or ten *racticás*, being added, the reſult is ninety *racticás*. According to this expoſition, twenty *panas*, which are the eightieth part of a hundred *puránas*, added to the eighth of that, or two *panas* and a half, make twenty-two *panas* and a half, *the rate of intereſt on a hundred puránas, if there be only a ſurety:* and the ſame method ſhould be practiſed in the caſe of ſilver coins, and the like. On this opinion alſo, we do not diſcover why the letter M occurs in the gloſs (*Aſhtaménabhágéna*).

A thorough examination of theſe opinions, to ſelect the beſt, muſt depend on the mental faculties of intelligent *inquirers*. On what proof or argument it is held, according to the opinion delivered in the *Retnácara*, that the portion not ſpecified is a ſixteenth, muſt remain a queſtion: the other reading (a ſixtieth part) is not admitted in the *Retnácara*, nor in the *Chintámeni*; for in both the text is thus explained, "an eighth part is added:" and in the commentary on YÁJNYAWALCYA, *where this reading occurs*, the text is not expounded. Whether the cerebral S be not an error of the copyiſt, is a queſtion on the ſecond interpretation. On MISRA's expoſition, the queſtion is, how the intereſt, where a ſurety only is given, ſhould ſo little exceed the rate of intereſt where a pledge is given.

 "If

"If there be a ſurety;" the ſenſe is, if there be only a ſurety; for higher intereſt would be improper, if there were both a ſurety and a pledge.

"If there be neither pledge nor ſurety *(nirádháné)*;" here the word *ádhána* ſignifies both pledge and ſurety; hence, if there be neither ſurety nor pledge, two *puránas* are received *on a hundred.*

The *Retnácara.*

The derivation of the word is, "what is placed *(ádhíyaté)* for the ſake of taking up a loan *;" and that deſcription is applicable both to a pledge and a ſurety. The privation of both ſorts of ſecurity is *nirádhána*, want of pledge and ſurety. Or the word *ádhána* may be reſtricted to pledges: thus, becauſe an eighth part is directed to be added, if there be no pledge but a ſurety *only*, therefore, by the regular form for general rules, and exceptions *to thoſe rules*, the *remainder of the* text relates to a different caſe of loans without a pledge; *that is, one without pledge or ſurety.* Ultimately there is not, in our opinion, any difference.

On this ſubject an obſervation ſhould be made. The ſervant of ſome perſon aſks a loan of a money-lender; he replies, "give a ſurety or a pledge:" the ſervant requeſts his maſter to become his ſurety, that he may obtain a loan from this money-lender; his maſter replies, "I will not be thy ſurety, but I will promiſe him thy wages:" accordingly the ſervant's maſter tells the money-lender, "I will not pay him his wages, unknown to you;" and the money-lender, confiding therein, advances a loan to him. In ſuch a caſe, is it a loan with a pledge, or with a ſurety? Not the firſt; ſince the ſervant's maſter only intervenes, and is not in the nature of a thing belonging to the ſervant, there can be no pledge: nor is it of the ſecond deſcription; for this ſervant's maſter is not comprehended under any of the deſcriptions of ſureties enumerated, ſureties for appearance, for honeſty, for payment, and for delivery. The ſervant's maſter does not ſay, "I will produce this man if he abſcond;" nor, "that man is truſt-worthy, and will not be averſe from repaying a loan received:" neither does he ſay, "if the debt be not diſcharged by him, I will make good the ſum;" nor, "I will recover the amount from him, and diſcharge the debt." How then can he be

* See a different etymology at V. 81.

be a ſurety? The debt muſt conſequently be one for which there is neither pledge nor ſurety: this again is not true in reaſoning; for there is a motive of confidence. On this propoſed caſe it is ſaid, this is a debt for which a ſurety is given: although the ſervant's maſter is not poſitively comprehended in the four deſcriptions of ſureties, yet, as that enumeration is a mere illuſtration, it muſt be admitted that ſuch a perſon is a ſurety; and if the ſervant's maſter break his own promiſe, he muſt diſcharge the debt. The intereſt ſhould therefore be an eighth part added to an eightieth; or the wages may be conſidered as a pledge. In that caſe the debtor's aſſent is given to the hypothecation; and a declaration being made by the debtor to that effect, the ſervant's maſter is certainly ſurety for delivery of the pledge, not for payment of the debt: *but*, although there be no promiſe of payment, there is a lien on the *promiſed* delivery of the pledge; and a lien prevents ſeizure by any other creditor. The intereſt, therefore, ſhould, in this caſe, be one eightieth part only of the principal. But, if he do not perform his work, then, no wages being earned, how is the debt diſcharged? To this it is anſwered, does the ſervant's maſter diſmiſs him without a fault? If ſo, the ſervant's maſter is amenable: the ſervant being faultleſs, and the maſter needing another ſervant, this ſervant ſhould not be diſmiſſed; for his diſmiſſion could only originate in malice. This is conſiſtent with reaſon. But, if the ſervant were faulty, his maſter would not be amenable *for diſmiſſing him*: and, when his diſmiſſion takes place, the debt ſhould be paid with intereſt, or a new pledge be given; for this caſe is the caſe of a pledge deſtroyed by the act of God (CI, &c). But, if the ſervant deſert his maſter without provocation, in that caſe a ſurety muſt certainly be given, if he cannot immediately diſcharge the debt, nor give another pledge; or, on failure thereof, the debt from that day becomes a debt unſecured by a pledge, and bears intereſt at the rate of two in the hundred. A man received a loan on the mortgage of a piece of land, pointed out by him in this form, "I will pay thee from the produce of the preſent year; the produce of this land is thy pledge." This debtor meditated a fraud, and gave no attention to culture, reflecting, "the produce of this land is my creditor's only; no benefit will ariſe to me from it: if no produce be obtained, what can the creditor do?"

do?" As in this caſe chaſtiſement is proper, and intereſt ſhould be computed at the rate of two in the hundred from the day when he neglected the culture of the land; ſo, in the caſe ſuppoſed, where the ſervant quits an unoffending maſter, thinking labour vain, *which is undergone* for the ſole purpoſe of diſcharging his debt, we hold it reaſonable that he ſhould incur puniſhment. So long as he performs work, his wages for that period belong to the creditor, and no other perſon; becauſe thoſe wages are pledged to that creditor: and this pledge falls under the deſcription of a pledge to be kept. After the undertaking ſuppoſed, if the ſervant's maſter alſo advance him a loan on any terms, and he only perform ſervice for a ſhort time, ſo that both cannot be paid out of his wages; what is the rule of deciſion in that caſe? The apparent difficulty may be reconciled in the ſame manner with the caſe where a man renting land for cultivation from one perſon, contracts a debt to another, and ſubſequently receives a loan alſo from his landlord, both which debts cannot be paid from the produce of that land. Half of the grain produced both from the uſe of land and by corporal labour belongs to the owner of the land, half to the huſbandman. In this caſe the huſbandman's ſhare, not yet gathered, is pledged to one perſon; but no act amounting to hypothecation has been done by the owner of the land: hence, the produce may be taken by the firſt creditor, but the landlord retains in his power the grain produced from his own land until his own demand be ſatisfied. Such is the practice in ſome inſtances. It cannot be aſſerted as a maxim, that the land muſt of courſe be left another year in his tillage, and that the debt may be paid from the produce of the following year. Since his tillage may be found defective, or he may be detected in knavery or the like, his tillage does not continue without the conſent of the landlord. This, and other inferences, may be drawn from reaſoning.

XXVIII.

YÁJNYAWALCYA:—An eightieth part *of the principal* is the monthly intereſt, when a pledge has been

been delivered: otherwiſe, it may be, in the direct order of the claſſes, two, three, four, or five in the hundred.

"Otherwiſe;" in caſes other than that of a pledge delivered; that is, when no pledge has been given. Since the text has the ſame tenor with that of Vyása (XXVII), it muſt be alſo underſtood that no ſurety was given. For a debt of one hundred *ſuvernas*, two *ſuvernas* ſhould be paid to a *Bráhmana*; three *ſuvernas* to a *Cſhatriya*; four *ſuvernas* to a *Vaiſya*; five *ſuvernas* to a *Súdra*.

XXIX.

Menu:—If *he have no pledge, a lender of money* may take two in the hundred by the *month*, remembering the duty of good men: for by *thus* taking two in the hundred, he becomes not a ſinner for gain.

2. He may thus take, *in proportion to the riſk, and* in the direct order of the claſſes, two in the hundred *from a prieſt*; three *from a ſoldier*; four *from a merchant*; and five *from a mechanic or ſervile man*, but never more, as intereſt by the month.

"Of good men;" reflecting that ſuch is the duty of good men. Cullúcabhatta.

"Two in the hundred" (XXIX 1); this concerns a *Bráhmana*. In anſwer to the queſtion, what is the rate for other tribes, he repeats the intereſt payable by prieſts, and declares *the rates for other claſſes* (XXIX 2).

"But never more" (*ſamam*); literally ſignifying, uniformly or equally; that is, neither more nor leſs. Cullúcabhatta.

But we hold, that "equally" is expreſſed for the purpoſe of ſhowing that as a prieſt becomes not a ſinner for gain (that is, does not contract the ſinful taint ariſing from the *undue* receipt of

of money) by taking two in the hundred, so a soldier, who takes three in the hundred, is not a sinner for gain.

Thus, according to CULLÚCABHATTA, CHANDÉSWARA, BHAVADÉVA, VÁCHESPATI MISRA, and others, an eightieth part *of the principal* is the *monthly* interest, when a pledge is delivered; but two in the hundred, if there be no pledge.

The *Médhátit'hi* and GÓVINDA RÁJA expound the text of MENU (XXIX), 'If a man in distress cannot provide for his wants on the interest first mentioned, he may take two in the hundred, or the like.' For the text of YÁJNYAWALCYA (XXVIII) solely concerns loans secured by a pledge: and there is no objection to this explanation of the word "otherwise;" in a case other than that of a man who can provide for his wants, as implied in the former part of the text; that is, where he cannot do so. Here it may be questioned, what should be the application of the text of VYÁSA (XXVII); for a pledge is there signified by the word *ádhána*. Although the text might be well applied by anyhow explaining it "provision for wants," yet there would be no determined rate when no pledge is delivered: if the rate were the same for loans with or without a pledge, the expressions in the texts of YAJNYAWALCYA and VYÁSA, "when a pledge has been delivered," and, "if a pledge be given," would be unmeaning. But the receipt of two in the hundred, and the like, is authorized by the *Médhátit'hi* and other commentaries, on the authority of the phrase, "he becomes not a sinner for gain" (XXIX), which they apply to the case of utmost distress, for the purpose of obviating the doubt whether a man become a sinner by taking two in the hundred. The case of absolute inability to provide for wants might exist, as well as the case of a loan unsecured by a pledge as stated by YAJNYAWALCYA. However, this *exposition* should not be admitted, because it is disapproved by CHANDÉSWARA, VÁCHESPATI MISRA, BHAVADÉVA, and many other authors. To expatiate would be vain.

On the subject of loans without a pledge, the following text propounds a rule.

XXX.

HÁRÍTA:—For twenty-five *puránas* (*or four hundred*

dred panas) *of copper, lent without either pledge or ſurety,* the intereſt may be eight *panas* a month; and the principal being doubled in four years and two months, bears intereſt no longer: such intereſt is legal; and the lender violates no duty by taking it.

" Being doubled;" becoming two-fold: and the intereſt is therefore two in the hundred by the month. " Bears intereſt no longer;" intereſt ceaſes. The *Retnácara.*

Intereſt is ſettled at rates varying in the order of claſſes, on loans made without receiving a pledge. By parity of reaſoning, different rates ſhould be alſo inferred, in the order of the claſſes, when a pledge or ſurety is given. As is directed by VÁCHESPATI; ' intereſt ſhould alſo be ſimilarly regulated, in the order of the claſſes, on loans ſecured by a pledge and the like.'

Does the order of the claſſes relate to the borrower or lender? CHANDÉSWARA holds, that it relates to the debtor; for he ſays, ' both theſe texts concern a *Bráhmana* contracting debts;' and again, ' *he may receive intereſt at theſe rates* from a prieſt, a ſoldier, a merchant, and a mechanic *reſpectively*:' and this is conſiſtent; for it is expreſſed in the text of MENU, " He may thus take, in the order of the claſſes, (from *Bráhmanas* and the reſt,) two in the hundred, and ſo forth;" and there is no difficulty in explaining the text of VISHNU (XXXI), " may receive from his debtor, in the direct order of all the claſſes, two in the hundred, and ſo forth."

XXXI.

VISHNU:—But a creditor may receive intereſt at due rates from his debtor, or *may take from him,* in the direct order of all the claſſes, two, three, four, or five in the hundred by the month.

The ſenſe of the text is as follows: " at due rates;" an eightieth part of the principal, or an eighth added to an eightieth: ſuch a proportion he may take by way of intereſt. In regard to loans

loans without pledge or ſurety, the Sage adds, " two, three, four, or five in the hundred, &c."

VIJNYÁNÉSWARA alſo holds, that the order of the claſſes reſpects the borrower. But, in VÁCHESPATI MISRA's opinion, it reſpects the lender: accordingly he ſays, " A *Vaiſya* infringes no duty by taking intereſt at the rates preſcribed in this text of MENU, and in other places; nor *do Bráhmanas* and the reſt *infringe any duty*, by doing ſo in a ſeaſon of diſtreſs." Here ſtating generally, that a *Vaiſya* infringes no duty, he adds, " nor *Bráhmanas* and the reſt, in a ſeaſon of diſtreſs:" ſince there is no other term in that phraſe to which the words can be referred, the meaning of what he ſays is this, " a *Vaiſya*, in all circumſtances, and *Bráhmanas* and the reſt, in diſtreſs, infringe no duty by taking *ſuch intereſt*." What is the ſenſe of MENU's text, conſiſtently with this opinion? *It is as follows:* " In the direct order of the claſſes;" according to the order of the claſs to which he belongs, the lender may take, &c. We think, the order of claſſes ſhould be conſidered as relating both to the lender and borrower, on the authority of both commentators, CHANDÉSWARA and VÁCHESPATI. Thus the contemplative Sage

XXXII.

YÁJNYAWALCYA ordains:—All borrowers, who travel through vaſt foreſts, may pay ten, and ſuch as traverſe the ocean, twenty in the hundred, to lenders of all claſſes, *according to circumſtances*, or whatever intereſt has been ſtipulated by them, *as the price of the riſk to the lender.*

Or whatever intereſt has been ſtipulated by them, all borrowers ſhould pay to lenders of all claſſes. Thoſe who travel by difficult roads, or traverſe the ocean, for the ſake of commerce, ſhould pay ten *panas*, or twenty *panas* reſpectively, on the hundred *panas*, if no pledge have been given. Greater intereſt is paid on account of the riſk of loſing the principal.

'SÚLAPÁNI in the *Dípacalicá.*

But, if there be a pledge or ſurety, the intereſt ſhould not exceed the rates preſcribed, for there is not ſuch a riſk of loſing the

 principal.

principal. "Ten Panas;" the meaning is, a lender may take one part in ten.

The Sage declares an alternative in reſpect of the preſcribed rates of two and three in the hundred, and the like: "or whatever intereſt has been ſtipulated by them." The *Dípacalicá.*

All borrowers, *Bráhmanas* as well as others, ſhould pay to lenders of all claſſes, *Bráhmanas* as well as others, whatever intereſt has been ſtipulated by them. Whether a pledge have been delivered or not, they muſt pay the intereſt, which has been promiſed by them in this form, "this intereſt ſhall be paid by me."

CHANDÉSWARA reads *ſwacrĭtám,* ſtipulated by the borrower himſelf. BHAVADÉVA reads *ſucrĭtám,* which he explains, "allowed by all ſages, namely, the eightieth part of the principal and the like." According to CHANDÉSWARA, this intereſt falls under the deſcription of *cáritá,* or intereſt ſtipulated by the borrower. But according to BHAVADÉVA, the two caſes may be reconciled by referring them to circumſtances, in which a lender can or cannot *part with his money on the terms generally preſcribed.* CHANDÉSWARA's interpretation ſhould be admitted, for his reading is approved by VIJNYÁNÉSWARA and 'SÚLAPÁNI.

If the order of claſſes were referred to the borrower only, intereſt not varying on loans made by perſons of the ſeveral claſſes, there would be no purpoſe in ſaying, "to lenders of all claſſes" (XXXII). If it be referred to the lender only, intereſt not varying on debts contracted by perſons of the ſeveral claſſes, there would be no purpoſe in ſaying, "all borrowers" (XXXII). It ſhould not be argued, that the expreſſion "all borrowers," intends all, whether traverſing the ocean or not, and ſo forth. This would be inconſiſtent with the mode in which the text is cited; "the Sage declares an alternative in reſpect to the preſcribed rates of two and three in the hundred and the like." Accordingly MISRA alſo, in his gloſs on the text of CÁTYÁYANA (LVI), ſays, "after the lapſe of ſix months, intereſt ſhould be paid by a '*Súdra* at the rate of five in the hundred." Since otherwiſe he muſt contradict himſelf, it ſhould be underſtood as the opinion of VÁCHESPATI MISRA, that the order of claſſes relates both to the lender and borrower.

XXXIII.

XXXIII.

Menu:—Whatever intereſt, or *price of the riſk*, ſhall be ſettled *between the parties*, by men well acquainted with ſea voyages or journies by land, with times and with places, ſuch intereſt ſhall have legal force.

Is not this text of Menu incompatible with the text of Yájnyawalcya (XXXII)? For the text of Menu is fully explained in the *Retnácara*. " Men well acquainted with ſea voyages ;" mentioned merely as an inſtance ſuggeſting a trader in general: " With times and with places;" who ſee that ſo much is the profit at ſuch a place: " Legal force;" adjudication: therefore ſuch intereſt ſhould in ſuch a caſe be adjudged. It is evident from the purport, ſince the term uſed in the text is explained adjudication, that the intereſt ſhould be regulated according to the time, place and thing; the commentator ſays as much, by adding, " ſuch intereſt ſhould be adjudged:" the payment of ten and twenty in the hundred is, therefore, inconſiſtent with the obligation to pay the intereſt ſettled by men trafficking by ſea, and the like. This ſhould not be affirmed: the text of Yájnyawalcya ſhould be conſidered as applicable to the caſe where no ſpecific rate of intereſt has been ſettled. Váchespati, in his gloſs on the text of Menu (XXXIII), ſays, " they ſettle greater intereſt, expecting large profit from traverſing the ocean." Alluding to this, Hárita ſays, ſome allow intereſt at the rate of a *pana* for a *purána*.

XXXIV.

Háríta:—Some allow a *pana* each month for one *purána*, *or a ſixteenth of the principal*.

But Chandéswara ſays, this text (XXXIV) concerns a borrower of a mixed claſs. That may be queſtioned; for, the text being explained by referring it to traders by ſea, it is uſeleſs

to

to extend it to borrowers of a mixed clafs; and no Sage has propounded a higher rate of intereft payable by mixed claffes.

SECT. II.—*On Special Forms of Interest.*

XXXV.

VRĬHASPATI:—Learn, from their properties, the various forts of intereft declared to be four; or according to fome, five; and according to others, fix:

2. *Cáyicá*, corporal; *cálicá*, periodical; *chacravrĭddhi*, compound intereft; *cáritá*, ftipulated; *'sic'hávrĭddhi*, daily intereft; and *bhógalábha*, intereft by enjoyment.

3. *Cáyicá* is connected with (*cáyá*) *the* body *of a pledged animal; cálicá* is due monthly; intereft upon intereft is *chacravrĭddhi;* and intereft ftipulated by the borrower is *cáritá:*

4. When intereft is received at the clofe of each day, it is called *'sic'hávrĭddhi*, or hair-intereft; becaufe it grows daily, like hair, which can only ceafe growing on the lofs of the head.

5. Thus the daily intereft can only ceafe by the payment of the principal, and hence it is called *sic'hávrĭddhi:* the rent *or ufe and occupation* of a *pledged* houfe, or the produce of a *pledged* field, is called *bhógalábha,* intereft by enjoyment.

6. Intereft payable at the clofe of each day, and *cáyicá*, or *interest accruing from a pledged body,* as well as intereft by enjoyment, the creditor fhall receive entire, fo long as the principal remain unpaid:

7. *But* the uſe of a pledge after twice the principal has been realized from the uſufruct, compound intereſt, and the exaction of the principal and whole intereſt after a part of it has been liquidated, is uſury, and reprehenſible.

XXXVI.

Náreda:—In law, intereſt on loans is of four kinds: *cáyicá*, *cálicá*, *cáritá*, and *chacravriddhi*, or intereſt paid on an undiminiſhed principal, periodical intereſt, ſtipulated intereſt, and intereſt on intereſt.

2. Intereſt at the rate of one *pana*, or of half *or other fraction of a pana*, repeatedly paid without diminiſhing the (*cáyá*) principal, is named *cáyicá*; but that which runs by the month, is conſidered as *cálicá*, or *payable at a* (*cála*) *time certain.*

3. That intereſt is named *cáritá*, or ſtipulated, when the debtor of his own accord has agreed for it; and intereſt upon intereſt is declared to run like a wheel.

But the author of the *Mitácſhará* reads a quarter of a *pana* inſtead of half a *pana*.

XXXVII.

Cátyáyana:—Stipulated intereſt is that which has been ſpecially *and freely* promiſed by the debtor, in a time of extreme diſtreſs, above the allowed rate;

2. And *in that caſe*, *but* in no other whatever, ſtipulated intereſt muſt *always* be paid.

3. Where

3. Where a loan is made on an agreement that the whole uſe and profit of a pledge ſhall be the only intereſt, it is called *a loan on the* uſe of a pledge (*àdhibhóga*).

XXXVIII.*

Yájnyawalcya:—Intereſt on intereſt is *chacra-vrĭddhi;* monthly intereſt is *named cálicá;* that which is ſtipulated by the party himſelf, is *cáritá;* but *cáyicá* accrues from the body *of a pledged quadruped.*

2. A debt, ſecured *merely* by a written contract, ſhall be diſcharged, *from a moral and religious obligation,* only by three perſons, *the debtor, his ſon, and his ſon's ſon;* but a pledge ſhall be enjoyed until actual payment of the debt *by any heir in any degree.*

XXXIX.

Vyása:—That intereſt is called *cáyicá,* which ariſes from (*cáyá*) the body of a *pledged* female quadruped to be milked, or a male animal to work or carry burdens.

XL.

Gótama:—Some hold, that no *lender ſhould receive* intereſt beyond the year.

A rule, ſays Misra, *abridged* from the *following* text of Menu.

XLI.

* The text numbered XXXII is again cited in this place; and the ſecond verſe of this number is again cited at CCXXIX.

XLI.

MENU:—Let no lender *for a month, or for two or three months, at a certain intereſt,* receive *ſuch* intereſt beyond the year; nor any intereſt, which is unapproved; nor intereſt upon intereſt *by previous agreement;* nor periodical intereſt *exceeding in time the amount of the principal;* nor intereſt exacted from a debtor *as the price of the riſk, when there is no public danger or diſtreſs;* nor immoderate profits from a pledge to be uſed by way of intereſt.

CULLÚCABHATTA explains "unapproved," unſeen; *or he ſo reads the text* (*adrĭſhtam* inſtead of *adiſhtam*).

XLII.

MENU:—Stipulated intereſt beyond the legal rate, and different from the *following* rule, is invalid; and the wiſe call it an uſurious way of lending: the lender is entitled *at moſt* to five in the hundred *.

XLIII.

MENU:—Intereſt on money received at once, *not year by year, month by month, or day by day, as it ought,* muſt never be more than enough to double the debt, *that is, more than the amount of the principal paid at the ſame time* †.

XLIV.

* Before this text, the compiler again cites the text numbered XXXIII. A different conſtruction is put upon the text by commentators. See the expoſition numbered V.

† The remainder of this verſe is cited in a ſubſequent Section (V. 61). The firſt part of the following text has been already cited (XXXIV).

XLIV.

HÁRITA :—Some allow a *pana* each month for one *purána*, or *a ſixteenth of the principal.*

2. Grain, *borrowed before the harveſt*, may be doubled or at moſt trebled *according to its price* at the time of harveſt, *being then payable by agreement;* and ſo may wool and cotton: *but* graſs and the fibres of graſs, clarified butter, ſalt, and raw ſugar, may be increaſed eight-fold in one year.

XLV.

NÁREDA :—Of intereſt on loans, this is *the* univerſal *and higheſt rule;* but the rate cuſtomary in the country where the debt was contracted may be different:

2. It may be double, or treble, or, in another country, quadruple; ſo, in another, even octuple: what is uſual in the country, muſt be paid.

To reconcile the ſeeming contradictions of theſe texts, all commentators have eſtabliſhed various applications of them conſiſtent with their own apprehenſion *of the purport of the ſeveral texts.* The ſubject is very intricate; and the opinions of ſome authors ſhall therefore be ſeparately ſtated, to explain the ſenſe of the texts, and elucidate the rules eſtabliſhed.

I. According to the *Mitácſhará:*

Intereſt at the rate of an eightieth part and ſo forth, if it be receivable daily, is called *cáyicá;* the ſame, if receivable monthly, is named *cálicá;* this is declared by the commentator: and this intereſt, being received every month, is therefore *named cálicá;* the ſame intereſt divided by the number of days *in a month,* and receivable daily, is *cáyicá:* but *cáritá* ſignifies intereſt receivable

only

only at the time voluntarily ſtipulated by the borrower. *Chacra-vrĭddhi* is obvious.

On this interpretation, the texts of GÓTAMA and MENU regard intereſt named *cáritá.* An agreement for intereſt ſhould not be made, *even* by the deſire of the borrower, for a period exceeding one year. Intereſt therefore ſhould be paid by the year, as the longeſt period *for which it ought to be forborne; it ſhould* not *be* made *payable* at the end of thirteen months. Hence he has ſaid, "by the day, by the month, or by the year." Otherwiſe (unleſs it be paid by the year, which is the *period* mentioned) it would be difficult to obtain that intereſt *when long forborne.* In this caſe alſo, legal intereſt only ſhould be taken. The Sage declares it: "nor any intereſt which is unapproved;" which is not propounded in codes of law; or (on the other reading) which is not ſeen in codes of law. We infer, that the four ſorts of legal intereſt, and no other, ſhould be taken.

If intereſt have been received for a few months, and ſubſequent intereſt have remained unpaid, by reaſon of the debtor's indigence, even to the tenth or twelfth year, the principal is only doubled. The creditor may take his principal and an equal ſum as intereſt (XLIII).

"Received at once (XLIII);" another reading has *ſacrĭdá-hitá,* lent once. Money ſo lent can only be doubled; but recovered from one perſon, and lent to another, it may be more than doubled. On the firſt reading, *ſacrĭdáhrĭtá,* received at once, the text ſhould be thus expounded: "*intereſt on money,* received by degrees, day by day, month by month, or year by year, may more than double the principal."

The *cáyicá,* or corporal intereſt, mentioned by VYÁSA, and intereſt by enjoyment and hair-intereſt, explained by VRĬHASPATI, are excluſive of theſe. Hair-intereſt occurs where money is borrowed on a promiſe in this form: "I will pay twenty ſhells every day, as intereſt, until the debt be diſcharged; *on theſe terms* lend me one ſilver coin" (XXXV 4). The *cáyicá* of VYÁSA (XXXIX) is the uſufruct of a ſlave or the like, when no ſpecific agreement is made that the uſe and profit of the pledge ſhall be the only intereſt. Intereſt by enjoyment is the uſe or occupation of a pledged houſe or the like; and is mentioned by CÁTYÁYANA (XXXVII 3) under the name of *ádhibhóga* or *uſe of a pledge.*

These

These may be received entire, so long as the principal remain unpaid (XXXVI 6). Or the *cáyicá* of Náreda (XXXVI 2) and *śic'hávriddhi* of Vrĭhaspati (XXXV 4 & 5), *that is, daily interest*, may certainly be received entire, under the authority of the law, so long as the principal remain unpaid: but not interest named *cálicá* and the rest; for no law *expressly authorizes it.* Compound interest is immoral; and so is the use or profit of a pledged house or slave or the like, after receiving twice the amount of the principal (XXXV 7). But, we think, neither hair-interest *received daily*, nor interest received monthly or annually, is illegal, *though* it have amounted to a sum exceeding the principal.

To this an objection is made: if interest which is payable daily cannot, through the indigence of the debtor, be recovered each day; still, whenever the debt shall be discharged, that interest must be paid with the whole arrears of the account, however great the sum may be. This should be affirmed; else the mention of hair-interest in the text (XXXV 7) is unmeaning. But there is a consequent inconsistency with general practice; for in some countries it is the practice, that hair-interest should be received to the *last* day of the stipulated period; *but*, if *the principal* happen to remain unliquidated after that period, such interest only as is settled by five persons, *acting as arbitrators*, is received from that date. In other countries, hair-interest is only received for a few days as determined by five persons *acting as arbitrators*; and beyond that time, such interest as is settled by them.

This *seeming contradiction* may be reconciled from the text of Náreda; "but the rate customary in the country, where the debt was contracted, may be different" (XLV 1). However, another objection is started: if stipulated interest can only be received at legal rates, it contradicts the texts of Cátyáyana (XXXVII 1); for he describes stipulated interest as exceeding the allowed rate. It is answered, the prohibition against receiving any interest, which is unapproved, does not denote it *legally* irrecoverable, but immoral. If, therefore, a man require stipulated interest above the rate allowed by the law, he can recover it, but is guilty of a moral offence. This is evident from the text of Vrĭhaspati; "and the exaction of the principal and interest after a part of it has been liquidated is reprehensible"

ſible" (XXXV 7). Yájnyawalcya alſo declares, "all borrowers may pay whatever intereſt has been ſtipulated by them" (XXXII). On this expoſition, the intereſt payable by thoſe who travel through vaſt foreſts, as ſpecified by Yájnyawalcya (XXXII) is legal; for the text is cited with this obſervation, "the Sage declares an alternative in reſpect of intereſt varying according to the *claſs of the* receiver;" that is, the receiver of the loan. But, in fact, it is proper to conſider this as deſcriptive of ſtipulated intereſt, for it has the ſame import with the text of Menu (XXXIII). However, ſuch ſtipulated intereſt is legal, becauſe it is authorized by an expreſs law; but the text of Vrĭhaspati (XXXV 7) intends other borrowers than ſuch as traverſe the ocean and the like.

It ſhould not be argued, that the text of Menu has a different purport, coinciding with part of the text of Yájnyawalcya, "or whatever intereſt has been ſtipulated by them" (XXXII). That would be inconſiſtent with the interpretation of this text, "all borrowers, *Bráhmanas* as well as others, ſhould pay, to lenders of all claſſes, whatever intereſt has been ſtipulated and promiſed by them." But if it be expounded, "all borrowers, whether trafficking by ſea or not," then it may be made to coincide with the text of Menu.

Here it ſhould be obſerved, that the author of the *Mitácſhará* ſupplies the reaſon for the rate of ten in the hundred and the like, payable by thoſe who travel through vaſt foreſts and the reſt, "becauſe there is riſk of loſing even the principal lent." It is therefore indicated, that on loans ſecured by a pledge or the like, where no riſk of loſing the principal is incurred, the eightieth part only ſhould be taken.

The text of Yájnyawalcya on compound intereſt and the reſt (XXXVIII 1) is not approved in the *Mitácſhará*. According to the opinion delivered in that work, the receipt of intereſt named *cálicá* and the reſt, even beyond the year, is not forbidden.

II. According to Chandéswara:

"Intereſt beyond the year" (XLI) ſignifies intereſt exceeding the year. If a money-lender, apprehending that the ſum lent

lent would be repaid by the borrower in very few days, bargain for ſpecific intereſt, it ſhall only be extended to the cloſe of the year, not fixed for a period exceeding that *ſpace of time.*

CHANDÉSWARA.

The meaning ſuggeſted by the gloſs is this: a borrower aſks a loan of a moneyed man; but he conjectures, from the borrower's purpoſes, that it will be early repaid: he therefore ſays, "if you will undertake to pay intereſt for ſix months, I will lend the money;" and the borrower, agreeing to this condition, accepts the loan. In ſuch a caſe as this, a lender may require a ſtipulated period of ſix months, ten months, or one year; but not a greater time.

In like manner, ſome perſon, whoſe capital is ſmall, practiſes money-lending, becauſe he is unable to provide for his wants by other modes—A man, needing a loan, ſaid to him, "Lend me money:" the money-lender rejoined, "When wilt thou repay it?" The borrower told him, "My brother is gone to the royal reſidence; when he returns, two or three months hence, I will repay you." The money-lender conſidered, "he will repay it early, and my gain will be ſmall; why ſhould I truſt my property in the hands of another for ſo ſmall a gain? If he will promiſe to pay intereſt during a long period, then only ſhould the money be lent." Accordingly he told the borrower, "if thou wilt pay intereſt during a longer period, I will advance the loan." The borrower acquieſcing in this propoſal, the lender added, "if thou ſhouldſt repay the loan within the year, at the end of ſix or ſeven months, or at any time before the cloſe of the year, I muſt receive the amount of intereſt for a whole year." So ſaying, he advanced the loan; and the borrower, agreeing to thoſe terms, contracted the debt: and intereſt computed for a whole year was paid, whether he diſcharged the debt within the year or at the cloſe of the year. In ſuch a caſe as this, a lender ſhould not require a ſtipulation for intereſt one day beyond the year. But if the borrower cannot diſcharge the debt even at the expiration of the year, then indeed legal intereſt may be received beyond the year.

"Nor any intereſt which is unapproved:" let no lender receive compound intereſt, nor intereſt for ſtated times, nor ſtipulated intereſt, nor corporal intereſt, in modes, *or at rates,* unauthorized

authorized by the law. Confequently he fhould only receive periodical intereft, and the reft, in legal modes; that is, at the rate of an eightieth part of the principal, and fo forth.

Does not *cáritá* fignify intereft fpecially and freely promifed by the debtor? How then is it regulated by legal rates? *It is regulated* by the texts of MENU (XXXIII) and HÁRITA (XXXIV and XLIV).

The text of MENU is thus expounded: "men well acquainted with fea voyages" are mentioned merely as an inftance fuggefting a trader in general. "With times and with places;" who fee that fo much is the profit on fuch articles at fuch a place. That intereft which fuch traders fettle when borrowing money, has legal force, and fhould be adjudged.

The firft text of HÁRITA (XXXIV) is applied by CHANDÉSWARA to borrowers of a mixed clafs. "Grain may be doubled at the time of harveft" (XLIV 2); grain is doubled at the time when new grain is gathered, even two or three months after the loan. If it be not then paid, it can only be trebled, and bears no further intereft. "And fo may wool and cotton;" wool, that is, the hair of fheep and the like, and cotton alfo, bear the fame intereft as grain. "But the fibres of grafs, &c." on the fibres of the *vírana* and the like, and on grafs and the like, the intereft is eightfold for one year. Such is the glofs on the text of HÁRÍTA; and the meaning is, that this text does not concern the limits of intereft.

Is not this unreafonable? Grain muft be repaid two-fold at the time of harveft; that is, when new grain is gathered. If grain, therefore, be borrowed in the month of *Afhádha*, *Jyaifhthi*, or the like, it muft be repaid two-fold in *Bhádra* or *Paufha*. It is, confequently, a great difparity, that the fame intereft fhould be received in feven or eight months, which would be due in fifty months *at the prefcribed rate of two in the hundred*. Aware of this queftion, CHANDÉSWARA cites the text of NÁREDA (XLV), and thus expounds it: "this rate of intereft, an eightieth part of the principal, and fo forth, is univerfal, becaufe it is authorized by the law." In fome countries, corn is repaid with an advance of a quarter; in others, with an advance of half *the quantity lent*: thefe rates are alfo comprehended in *the text* (XLV 2); for twice, and three times as much, and fo forth,

forth, are mere examples. Confequently on falt, clarified butter, and the reft, intereft fhould be taken at the rate fettled by the immemorial cuftom of the country.

* But intereft at ten or twenty in the hundred, payable by thofe who travel through vaft forefts, or traverfe the ocean, is not ftipulated intereft *(cáritá)*; for CHANDÉSWARA fays, payment of it may be enforced, whether it have been ftipulated or not. In fact, fo much intereft as is fpecially promifed by the debtor, is ftipulated intereft, not confined to the rate of an eightieth, and fo forth. That ftipulated intereft alfo is allowed by the law, for YAJNYAWALCYA declares, " borrowers may pay whatever intereft has been ftipulated by them" (XXXIII); and CÁTYÁYANA fays, " ftipulated intereft is that which has been fpecially promifed by the debtor " (XXXVII): This intereft is legal, if it were promifed in a time of extreme diftrefs; but, promifed by compulfion, without fuch diftrefs, it is not legal—for CÁTYÁYANA adds, " and in no other cafe whatever muft ftipulated intereft be paid." Even though ftipulated in a time of extreme diftrefs, *on a loan renewed*, it is not legal, if payment could have been obtained; for VRĬHASPATI declares, " the exaction of the principal and intereft, after a part of it has been liquidated, is ufury, and reprehenfible " (XXXIV 7).

Cáyicá is of two forts; *one* arifing from the body of a *pledged* female animal to be milked, or a male animal to work or carry burdens, as defcribed by VYÁSA (XXXIX); *the other* explained by NÁREDA, intereft repeatedly paid without diminifhing the principal (XXXVI). The ufe and profit of a cow or the like to be milked, or of a boat or the like, where no fuch agreement has been *exprefsly* made, as defcribed by CÁTYÁYANA (XXXVII 3) is the *cáyicá* of VYÁSA; and it fhould be taken at the rate of an eightieth part *by the month*, under the reftriction of the text, " nor any intereft which is unapproved" (XLI).

CHANDÉSWARA fays, a cow or the like to be milked, or an ox or the like to work or carry burdens, are inftances mentioned generally; for the ufe of boats or the like, not exprefsly pledged, muft otherwife be excluded *from that definition of* cáyicá. When there is fuch an exprefs agreement as defcribed by CÁTYÁYANA, the ufe of the pledge is *ádhibhóga*, the fame with *bhógalábha*,

galábha, propounded by VRĬHASPATI. In this cafe no reference is made to the rate of an eightieth part, for no text fpecially directs it: the whole ufe and profit of the pledge *fhall be the intereft;* for fuch is the import of the text. Thefe two kinds of intereft are confequently diftinct, but fhould be admitted as has been ftated.

The *cáyicá* of NÁREDA is thus explained: "intereft to be repeatedly paid without diminifhing the body *(cáyá)* of the principal fum, at the rate of a *pana*, or half or other fraction of a *pana*, as agreed by both parties, is named *cáyicá* according to NÁREDA." CHANDÉSWARA.

For inftance; a borrower, coming to a moneyed man, afks a loan; in reply, he afks, "when wilt thou repay it?" the borrower rejoins, "I will repay it at the end of a month:" a loan is accordingly concluded to mutual fatisfaction. Afterwards, at the clofe of the month, the creditor demands payment; but the debtor, unable to difcharge the debt, anfwers evafively, "I will pay you at the end of a fortnight:" the creditor repeatedly urges payment; and the debtor, in order to fatisfy him, promifes fome additional intereft, fuch as a *pana (or the like)*. That additional intereft, which he thus promifes from time to time, being repeatedly fettled between the parties day after day, is the *cáyicá* of NÁREDA; it is not the ftipulated intereft named *cáritá*, for that commences from the date of the loan. On this account it is feparately mentioned by NÁREDA.

"Without diminifhing the principal;" in the cafe of intereft payable at ftated times *(cálicá)* and the like, if more than an eightieth part or the like have been paid for intereft, whatever appears, on computing the account at the time of difcharging the debt, to have been overpaid, by fo much is the principal, which was receivable by the creditor, diminifhed. But, in this cafe, what he receives from time to time, above the rate of an eightieth part, does not reduce the principal fum. It is not proper to fay, that the intereft fhould only be received at legal rates, becaufe this *(cáyicá)* is in its own nature a breach of the law. Were it fo, *ftill* the text, prohibiting any intereft which is unapproved (XLI), concerns only the *cáyicá* of VYÁSA, not this *(cáyicá)*: this form of intereft is only mentioned by CHANDÉSWARA incidentally. The word *(śaśwat)* "repeatedly" fignifies

ſignifies again and again; for it is ſo explained by AMERA. (Chapter XVII, on Indeclinable Words.)

That intereſt which is received month after month, at the rate of an eightieth part *of the principal*, is conſidered as *cálicá*. Here month is a mere inſtance: that intereſt, therefore, which is received by the year, is alſo conſidered as *cálicá;* and ſo is that which is payable at the end of ſix months, or the like. Accordingly MENU, in the text cited (XLI), mentions intereſt for time generally.

"Intereſt upon intereſt:" when a debtor, unable to pay the whole amount of intereſt, promiſes to pay it with intereſt; the intereſt, which is ſo promiſed, is wheel-intereſt.

CHANDÉSWARA.

More will be ſaid on this ſubject in the ſection on Recovery of Debts: but even intereſt upon intereſt a man ſhould only take at the legal rate of an eightieth part and ſo forth.

When the borrower, at the time of receiving the loan, makes an agreement in this form, "I will pay twenty ſhells a day," and the loan is made on thoſe terms; in that caſe, ſuch intereſt is hair-intereſt, as deſcribed by VRĬHASPATI (XXXV 4). Intereſt by enjoyment *(bhōgalábha)* has been already explained in the gloſs on *cáyicá*.

Cáyicá, hair-intereſt, and intereſt by enjoyment, ſhall be paid *entire*, ſo long as the principal remain unpaid. If the payment of intereſt have been diſcontinued a few days after *the loan*, and the debtor be only able to pay the debt ten or fifteen years afterwards, twice the amount of the principal only ſhall, *in general*, be received by the creditor, in lieu of other intereſt (XLIII): but it is not ſo in the preſent caſe. On the contrary, hair-intereſt ſhall be received on a calculation of the daily amount *forborne*. *Cáyicá*, or intereſt accruing from a pledged body, ſhall be received on a computation of an eightieth part of the principal monthly, until the principal be liquidated: if the thing to be uſed be deſtroyed by the act of GOD, another chattel muſt be delivered in its ſtead; or, if that cannot be, intereſt muſt be made good otherwiſe. Intereſt by enjoyment continues ſo long as the thing *pledged* remains with him who has the uſe and profit of it: if the pledge be deſtroyed by the act of GOD, the debtor ſhall be compelled to deliver another pledge, under the authority of a

 text

text which will be quoted in the chapter on Pledges. The creditor ſhould receive a freſh pledge; or, if that cannot be, the price of the uſufruct *forborne* ſhould be paid when the principal is liquidated. Theſe rules are grounded on a text of VRĬHASPATI (XXXV 6), and on one of YÁJNYAWALCYA (XXXVIII 2).

What ſort of intereſt is ſuggeſted by the texts, " let no lender receive intereſt beyond the year," (XL and XLI)? It is ſaid, " ſuch intereſt is a ſpecies of ſtipulated intereſt *(cáritá)*." Here it ſhould be noticed, that the legal amount of intereſt, whether received at the time when the debt is diſcharged, or earlier, or both *(partly at one time, and partly at another)*, only equals the principal ſum. If ſtipulated intereſt, *cáyicá*, hair-intereſt, or intereſt by enjoyment, when added to the principal, more than double it, they are not legal *in a moral view*. By receiving ſuch intereſt, *Bráhmanas* and others, and even *Vaiſyas*, commit a ſin; but if a creditor inſiſt on obtaining it, the king ſhall enforce payment: VRĬHASPATI declares as much (XXXV 7). The uſe and profit of a pledge, or the uſe of a chattel in that form of intereſt which is named *cáyicá*, after twice the amount of the principal has been obtained from the uſufruct; intereſt upon intereſt; and, the exaction of principal and intereſt, that is, of the principal with the whole intereſt, after a ſmall part or the whole of the intereſt has been received, either as ſtipulated or monthly intereſt, is uſury reprehenſible in a man who ſubſiſts by money-lending. The meaning of the text is, that ſuch uſury produces the conſequence of ſin; not that the king ſhall not enforce payment of it.

" Stipulated intereſt beyond the legal rate, &c." (XLII); *this text of* MENU *is otherwiſe* expounded by CHANDÉSWARA: " intereſt exceeding the rate ſtipulated *by the debtor*, and different *from the rates preſcribed by the law*, is invalid: for Sages have declared the *legal* way of money-lending." The *legal* way of money-lending is *founded on* this: intereſt allowed by the law, or ſtipulated by the debtor, is valid, not any other intereſt. But if the lender, through covetouſneſs, require greater intereſt, and the borrower, apprehenſive of not finding any other lender, be willing to pay *higher intereſt*, in that caſe the rule is this; " the lender is entitled *at moſt* to five in the hundred" (XLII). " From

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a *Brâhmana*" ſhould be ſupplied; for the rule would be ſuperfluous if it were referred to a *Sûdra*. The author of the *Mitácſhará ſeems to have* entertained the ſame opinion; for he has not particularly remarked *on the text*. On this interpretation alſo, the payment of hair-intereſt and *cáyicá*, ſo long as the principal remain unpaid, is conformable to the text of NÁREDA (XLV). CHANDÉSWARA's opinion may be thus briefly ſtated.

III. According to VÁCHESPATI MISRA:

On his explanation, *cáyicá* and the reſt alſo vary from the legal rate of an eightieth part *by the month;* for he cites the texts of VRĬHASPATI in reply to the queſtion, What other kinds of intereſt are there? and how many ſorts *of intereſt?* If intereſt at the eightieth part *of the principal*, as already mentioned by MISRA, were diſtributed by VRĬHASPATI into monthly and annual intereſt, and ſo forth, the citation introduced by the queſtion, "what other kinds of intereſt are there?" would be irrelevant.

When this queſtion is put, "What other kinds of intereſt are there?" the anſwer is, hair-intereſt, and intereſt by enjoyment. "How many ſorts?" the *anſwer is*, legal intereſt, as *cálicá* and the reſt; and intereſt not preſcribed by the law, as *cáritá* and the reſt. But the expoſition would be imperfect, ſince the receipt even of legal intereſt, as *cálicá* and the reſt, beyond the year, is forbidden; and the omiſſion of higheſt *limited* intereſt would be derogatory *to the Sage*.

Subdividing into four ſorts intereſt at the rate of an eightieth, and ſo forth, as in the expoſition of CHANDÉSWARA; and adding them to other kinds of intereſt, namely hair-intereſt, and intereſt by enjoyment; *there reſult the kinds of intereſt* ſpecified by VRĬHASPATI. Thus hair-intereſt, and intereſt by enjoyment, are ſtated in anſwer to the queſtion, what other kinds of intereſt are there? And *cáyicá*, and other ſubdiviſions *of the general rate*, are ſtated in anſwer to the queſtion, how many ſorts there are? This again is erroneous; for, had ſuch been the meaning, the queſtion, how many ſorts? ſhould have been firſt put. To expatiate would be vain.

On

On this interpretation, the *cáyicá* of VYÁSA, arising from the profit of a slave's labour or the like, falls under the description of interest by enjoyment; but the *cáyicá* of NÁREDA must be considered as one of the subdivisions *of the general rate*. For MISRA says, the *cáyicá* of VYÁSA falls under the description of interest by enjoyment; but the *cáyicá* of NÁREDA is distinct from these: and the *cáyicá* of VYÁSA is not mentioned in the following exposition: "*cáyicá* is interest by the year; *cálicá*, by the month; *chacravriddhi*, interest upon interest; *cáritá*, interest specially promised in a time of extreme distress; *'sic'hávriddhi*, interest payable daily; *bhógalábha*, the use and profit of a slave's *labour*, and the like."

The use of distinguishing the *cáyicá* of VYÁSA from interest by enjoyment, will be hereafter explained. But the *cáyicá* of NÁREDA is interest payable by the year, considering the word *sas'wat*, repeatedly, as signifying annually. This is paid without diminishing the principal; even though received for a thousand years, it does not reduce the principal. If the interest happen to be forborne after *the first* few days, the whole arrears of interest must be paid when the debt is discharged; for, according to MISRA's opinion, this kind of interest is intended by the word *cáyicá* in the text of VRIHASPATI (XXXV 6): and this has been stated by MISRA, on the authority of HELÁYUDHA.

But if the expression of MISRA, "to be paid by the day," be authentick, the meaning must be, that the sum calculated on daily interest shall be paid yearly. Else it is inconsistent with his exposition, "*cáyicá* is interest by the year." The special rule adopted by him, that *cáyicá* and the rest must be received at the rate of an eightieth part, is not suggested by the law; but hair-interest, which is receivable daily, is founded on a text of VRIHASPATI (XXXV 4).

"*'Adhibhóga*, or a loan on the use of a pledge" (XXXVII 3); where an agreement is made, that the whole use of the thing shall be the only interest, it constitutes *a loan on the* use of a pledge. MISRA.

It is, consequently, intimated, that the word "pledge," *in* the first *part of the text*, is indeterminate; for by such an exposition *cáyicá* is of two sorts, *one of which corresponds with* àdhibhóga. It follows, that the various sorts of interest are seven.

Of

Of theſe the *cáyicá* of VYÁSA, *cálicá*, ſtipulated intereſt, and intereſt upon intereſt, ſhould not be received beyond the year. For the ſake of this diſtinction, VYÁSA has ſtated *cáyicá* ſeparately *from* àdhibhóga, *to which it is otherwiſe ſimilar.* *Cáyicá* is the uſe *and profit* of *the* bodies *of quadrupeds*, as oxen, horſes, and the like. Or the repetition of the word "pledge," in the text of CÁTYÁYANA, has a determinate uſe; conſequently, it ſhould be underſtood, as in the gloſs of CHANDESWARA, that *àdhibhóga* takes place when there is an agreement in regard to the pledge; otherwiſe the uſufruct is *cáyicá*.

Such intereſt may be taken even beyond the year, on a freſh agreement. The authority for this is the text of GÓTAMA (XL): and the ſenſe of the text is this; of the ſorts of intereſt enumerated, intereſt upon intereſt, and the reſt, no lender ſhould take the fourth ſort beyond the year; nor any intereſt which is not again declared or promiſed, beyond the year; that is, neither of the other three *without a freſh agreement*. The rule reſpecting the *cáyicá* of NÁREDA has been already delivered. It is the ſame in reſpect of the other two; at the time of diſcharging the debt, they ſhould be received in their own kind, or by their value.

A debt ſecured *merely* by a written contract (XXXVIII 2) ſhall be diſcharged by three perſons, the debtor, his ſon, and his ſon's ſon; but in the caſe of a loan on the uſe of a pledge, the debt muſt be diſcharged even by a great grandſon. Yet if the agreement were in this form, "I will relinquiſh the pledge when twice the amount of the principal has been realized," in that caſe the creditor muſt relinquiſh the pledge whenever he has realized double the amount of the principal.

XLVI.

YÁJNYAWALCYA:—But when a pledge has been given, *which the creditor promiſed to return on the debt being doubled*, then ſurely, the intereſt having equalled the principal, the pledge muſt be releaſed on the double ſum being paid, or having been received from the uſe of the pledge.

XLVII.

VISHNU:—Even if the higheſt intereſt, *or that equal to the principal ſum*, have accrued, the creditor ſhall not *be forced to* reſtore a pledge fixed *in his hands* unleſs there have been a ſpecial agreement.

This diſtinction is alſo noticed by CHANDÉSWARA, and ſhould be admitted by others. But that is not the import of the text, "a pledge ſhall be enjoyed until actual payment of the debt" (XXXVIII 2). The text of VRĬHASPATI (XXXV 7) has been explained. His former text on intereſt by enjoyment (XXXV 5) furniſhes an inſtance only of ſuch intereſt; for it coincides with the text of CÁTYÁYANA (XXXVII 3). It is thus expounded by MISRA: "Rent" ſignifies hire, uſe, or occupation of a pledged houſe: "Produce" (*ṡadas*) ſignifies grain or other fruit of a pledged field, agreeably to the ſenſe of the verb *sad*, cut down or reap.

Here boats and the like are alſo ſuggeſted by the word "houſe," taken as a general inſtance: and "rent," or uſe, alſo ſuggeſts tranſport of merchandize, and the like.

In a gloſs on the text of MENU (XLIII), MISRA thus expounds it: "If gems, *money*, or the like, be received at once, double the amount of the principal only ſhould be taken; but if they be not received at once, more may be taken." Conſequently here, as before, if intereſt have anyhow remained unpaid after the firſt few days, the principal is only doubled, however long the period *of forbearance* may be, and no more *ſhould be received.*

The text, allowing a *pana* each month for a *purána* (XXXIV), and that which confirms intereſt ſettled by men well acquainted with ſea-voyages (XXXIII), concern ſtipulated intereſt only. But theſe rules ſubſiſt where the price is great at the time when the debt is contracted, or where the value of a thing bought with money borrowed for the purpoſes of trade, and ſold in another country, is improved. The text of HÁRÍTA (XLIV 2) declares

declares legal intereſt on particular articles. It is proper to conſider the text of YÁJNYAWALCYA (XXXII) as ſolely relating to ſuch intereſt. This and other inferences may be drawn from reaſoning.

In this expoſition BHAVADÉVA concurs; but HELÁYUDHA reads the text of NÁREDA (XXXVI 2), *panaváhyá* inſtead of *panárdhádyá*, and explains the text, "intereſt to be borne (*váhaníyá*) or received by the creditor, repeatedly, even for a thouſand years, if the (*pana*) principal ſum remain *due*, without any diminution of (*cáyá*) the principal, is called *cáyicá*." On this general conſideration it is ſaid by MISRA, that *cáyicá* muſt be paid ſo long as the principal remain unliquidated. But CHANDÉSWARA rejects this reading, becauſe it has been unnoticed by moſt authors.

"Let no lender receive intereſt beyond the year" (XL) and XLI): if a creditor is deſirous of receiving intereſt in ſuch a manner that intereſt may not ceaſe on *its equalling* the debt, he ſhould receive his intereſt before the cloſe of the year, not after the year has expired. The meaning, therefore, on this interpretation is, that he ſhould receive the intereſt then only when the debt is diſcharged, or the higheſt limited intereſt due for the time *the loan has remained unpaid*. But if the creditor, through want of confidence in his debtor, or from his own inability to provide for his wants *otherwiſe*, wiſhes to receive intereſt within the year, in that caſe he may receive it before the cloſe of the year; that is, he may receive the intereſt for twelve months, month by month. But after a year, the debt is only doubled by remaining undiſcharged during fifty months; before the expiration of that period, intereſt is payable on the terms of the loan. Conſequently, *cáyicá*, if it can be recovered, may be taken beyond the year, when there is a promiſe in this form, "I will pay it *regularly* until the debt be diſcharged;" and ſo may *cálicá*, if there be a promiſe of paying it month by month. But if the creditor cannot obtain regular payment, the principal is doubled in *due* time.

Cáritá is deſcribed by CÁTYÁYANA (XXXVII 1), and noticed by MENU (XXXIII). By the rule, "nor any intereſt which is unapproved" (XLI), *it is directed* to take even *cáyicá*, and the reſt, only at the rate of an eightieth part, and ſo forth.

But

But if there be an agreement in this form, " I will pay it daily," it is hair-intereſt. Other intereſt muſt be regulated in the mode above mentioned.

IV. According to 'Súlapáni in the *Dípacalicá.*

On the text of Yájnyawalcya (XXXVIII 1) it is remarked in his work, "this verſe is not found in ſome copies." Intereſt is of ſix ſorts under the text of Vrĭhaspati (XXXV 2). There *cáyicá* is intereſt which ariſes from the labour or uſe of an animal to carry burdens, or of a female quadruped to be milked; *cálicá* is intereſt which is payable by the month; intereſt upon intereſt is *chacravrĭddhi;* intereſt *ſpecially and freely* promiſed by the debtor himſelf is *cáritá;* that which is received daily is *'sic'hávrĭddhi;* and the profit ariſing from the uſe of a pledge is *bhoga.* Among theſe, *'sic'hávrĭddhi, cáyicá,* and intereſt by enjoyment, may be received until the principal be diſcharged (XXXV 6).

This notion is intimated: according to Yájnyawalcya, intereſt by enjoyment is comprehended under corporal intereſt *(cáyicá);* and the *cáyicá* of Náreda, as expounded by Chandéswara, falls under the deſcription of ſtipulated intereſt *(cáritá):* as expounded by Misra, it falls under the deſcription of intereſt payable at a time certain *(cálicá);* for the word " month " is a mere inſtance of a general ſenſe. *'Sic'hávrĭddhi* is only a diſtinct form of ſtipulated intereſt; but ſo long as the principal remain unliquidated, this intereſt muſt be paid to fulfil the terms of the agreement. But if there be no promiſe of paying it daily ſo long as the principal remain undiſcharged, it is not hair-intereſt. If an agreement that intereſt at the rate of four *panas,* or the like, ſhall be paid every fifth day ſo long as the principal remain undiſcharged, that alſo ſhould, it ſeems, be paid until the principal be liquidated; but ſuch a contract ought not to be made, becauſe it is not authorized by the law.

The text of Menu (XLI) muſt be explained as in the gloſs of Heláyudha; but other texts muſt be underſtood in the mode already ſtated. In the text of Yájnyawalcya (XXXII), greater intereſt is allowed on account of the riſk of loſing the principal: it is therefore legal in this *author's* opinion. With this exception, the text of Vrĭhaspati (XXXV 7) is applicable

cable to all cafes. The Sage declares an alternative in regard to the prefcribed rates of two and three in the hundred, and the like, " or whatever intereft has been ftipulated by them" (XXXII). This confequently intends ftipulated intereft and the like; and the text, beginning with the words " intereft upon intereft" (XXXVIII 1), only recapitulates thofe forts of intereft.

V. According to CULLÚCABHATTA:

" Let no lender receive intereft beyond the year" (XLI): if a creditor, having contracted for intereft payable at ftated times (*cálicá*), or the like, but finding it troublefome to receive intereft monthly, tell the debtor, " thou fhalt pay the intereft of feveral months at once;" ftill he fhould receive it within the year. For example: intereft for fix months, for ten months, or for one year, may be paid at once; not intereft for thirteen, fourteen, or fifteen months. The meaning is this: if he do not receive intereft before the clofe of the year, in that cafe, fince its periodical payments are interrupted, and it can *now* only be received when the debt is difcharged, intereft can on no account be more than fufficient to double the debt, as is declared by MENU (XLIII). It is implied, that intereft receivable day by day, month by month, or the like, may be taken to a greater amount than is fufficient to double the debt, provided the principal remained unpaid. Such is the glofs of CULLÚCABHATTA.

Here intereft receivable day by day is the *cáyicá* of NÁREDA; for the word *'saswat*, " repeatedly," in that text (XXXVI), bears the fenfe of " daily." The fame intereft is defcribed by VRĬHASPATI, under the name of hair-intereft (XXXV 4). Not confidering the *cáyicá* of VYÁSA and profit by enjoyment *of a pledge* (*bhógalábha*) as intereft, it is ftated that the various forts of intereft are four. But if thefe be acknowledged to be forts of intereft, there are five or fix kinds.

In the text of MENU (XLI) the reading is *adrĭfhtam*, unfeen: let no lender receive any intereft unfeen in codes of law, or unknown *to the law*. This prohibition is intended to fhow the immorality *of receiving fuch intereft*, not to ordain that a lender fhall not obtain it, if he wifh to receive *fuch intereft*. Confequently, ftipulated intereft, and the like, which have been previoufly

viously settled, only produce a taint of sin in the lender who receives them, not an incapacity to recover them. What are those *usurious* forms of interest? *In answer to this question*, the Sage adds, "interest upon interest, &c." VRĬHASPATI propounds their nature *in a text above cited* (XXXV 3).

Interest upon interest is, in its own nature, reprehensible; interest for a time certain, when more interest is *received* than is sufficient to double the principal; corporal interest *(cáyicá)*, when the animal is too much worked or milked; stipulated interest, even though it have been settled by the debtor in a time of extreme distress, and by the creditor through kindness. These four illegal sorts of interest should not be received: VRĬHASPATI expressly forbids it (XXXV 7).

CULLÚCABHATTA.

Here the *cáyicá* of NÁREDA must also be comprehended under the term *cáyicá*. Hence the receipt of that also is shown immoral. How is it immoral, if the debt be discharged within the fourth or fifth month; for, in that case, more interest than is sufficient to double the principal is not received? *This objection is not well founded;* for those kinds of interest are reprehensible, from their intrinsic evil. On this opinion also, a creditor, who advanced a loan, should only receive twice the amount of the principal, after the time when the principal is duly doubled, and not at any time before that period. But if the debt be discharged before the time when it would regularly be doubled, in that case the principal, with *legal* interest only, should be then received. Thus *Bráhmanas* and the rest violate no duty. Within that period, whatever interest is received at any stated times, is *cálicá;* for the word "month" is *merely* an instance *stated generally* in the texts of NÁREDA and others (XXXVI 2). Accordingly MENU mentions periodical interest generally (XLI).

The text *subsequently cited* (XLII) is applicable to the case of interest due without a special agreement. That will be explained under its proper head. The text, "whatever interest shall be settled by men well acquainted with sea voyages, &c." (XXXIII), is expounded as above stated.

How can it be said that stipulated interest *(cáritá)* is unauthorized by the law, since *cáritá* is described in the code of CATY-

AYANA,

ÁYANA, "intereſt which has been ſpecially *and freely* promiſed by the debtor in a time of extreme diſtreſs" (XXXVII)? Nor ſhould it be argued, that it is unauthorized by the law, not being ſuggeſted in the *Véda*. The text of CÁTYÁYANA may alſo be conſidered as *a portion of* the *Véda*: elſe the higheſt *limited* intereſt, ſuch as intereſt doubling the debt and the like, would alſo be unauthorized by the law. To this it is anſwered, the law expreſſes generally, that a *Vaiſya* and others may ſubſiſt by money-lending; in anſwer to the queſtion, how much profit ought to be taken *by a money-lender?* the texts of MENU and the reſt are adduced, or the ſcriptural law to be eſtabliſhed through them: a lender may receive, on a loan, the eightieth part *of the principal and ſo forth*, in the order of claſſes, as preſcribed; or he may take, as the higheſt intereſt, if the debt have been long outſtanding, a ſum equal to the principal, for the intereſt accumulated at ſuch rates: this, and other *legal intereſt, a lender may receive*. Intereſt ſo authorized is alone received in practice as legal intereſt. It is the rule for delivery *by the creditor*; for it is taught by the law, which ſuggeſts a mode of ſubſiſtence by the delivery of loans. But if a borrower ſtipulate greater intereſt through the urgency of his wants, then, in anſwer to the queſtion, what ſhould be done at the time of payment? a rule may be deduced from the text of CÁTYÁYANA (XXXVII 1), the debtor muſt pay the intereſt which he has promiſed. Such intereſt, although it be ſo authorized, is not preſcribed to the lender by codes of law: hence the delivery of intereſt, which has been promiſed *by the debtor*, is a rule for receipt*, a *ſubordinate* title of judicial procedure under the head of Loans delivered. But, in fact, intereſt allowed by the law is legal intereſt; and intereſt ſettled by the will of men is not received in practice as legal intereſt; for the meaning of "legal" is, "allowed by the law." Hence, where a creditor, from the circumſtances of the times or the like, accepts of leſs than legal intereſt, ſince leſs intereſt muſt in that caſe be admitted, there is no objection to the law of ſtipulated intereſt, as it concerns the lender *as well as the borrower*. Such is CULLÚCABHATTA's opinion.

VI. *According to other Commentators:*

But others conſider the text of YÁJNYAWALCYA (XXXII) as

* See the gloſs on the text of NÁREDA (I).

as intended to authorize the receipt of ten or twenty in the hundred from thofe who travel through forefts or traverfe the ocean, although *fpecifick* intereft have not been ftipulated; but, if *fpecifick* intereft have been ftipulated, *it is ftated as* another cafe; "or whatever intereft has been ftipulated by them:" and in this are included the rates of nine and eleven in the hundred, and the like. The text of MENU (XXXIII) has the fame import; but the expreffion, "all *borrowers*," fuggefts *not only* thofe who travel through forefts, or traverfe the ocean, *but* any others of the four claffes. However, the acceptance of intereft above the prefcribed rates, from fuch as travel through vaft forefts and the reft, is immoral; for there are no grounds of reftriction to the text of VRĬHASPATI (XXXV 7).

Here it fhould be obferved, that large gains are the grounds on which greater intereft is paid by thofe who traverfe the ocean; as intimated by the text of MENU, "whatever intereft fhall be fettled by men well acquainted with times and with places." The grounds are the fame in other circumftances of the fame cafe, intended by the text of YÁJNYAWALCYA (XXXII); not the rifk of lofing the principal. Thus the rate of intereft is the fame, even though the debt be fecured by a pledge.

Does not the text of MENU (XXXIII) confequently become unmeaning, fince CÁTYÁYANA authorizes the payment of ftipulated intereft by debtors of all defcriptions (XXXVII 2)? No; for CÁTYÁYANA declares, that intereft, which has been promifed, through compulfion, by others than feafaring traders and the reft, fhall not be paid; "and in no other cafe whatever muft ftipulated intereft be paid" (XXXVII 2). But a fpecial rule is delivered (XXXIII), to legalize intereft promifed, through compulfion, by feafaring traders and the reft. This text, however, is confidered by CHANDÉSWARA as intending traders in general; and both texts are referred by him to the head of ftipulated intereft (*cáritá*). But intereft promifed by others than traders, in a time of diftrefs, *is* called *cáritá*, *and* muft be paid by the debtor; but promifed through compulfion, without *any neceffity arifing from* a feafon of diftrefs, it need not be paid (XXXVII 2). This is a general inftance: fometimes, from the circumftances of the times, even lefs than legal intereft, accepted by the lender, is confiftent with ufage, and falls under the

the deſcription of ſtipulated intereſt. By accepting it, the lender commits no ſin; but by parity of reaſoning, a ſin is committed by the debtor *.

If ſtipulated intereſt above the rate of an eightieth part may be paid by the free conſent of the debtor, what is the purport of the text of MENU (XLI)? Some explain it, "let no lender receive intereſt on money which has not been lent more than a year." Conſequently this belongs to the caſe of intereſt without a ſpecial agreement; ſo VISHNU ordains, "after the lapſe of one year, debtors muſt pay intereſt, as allowed, even though not agreed on *at the time of the loan* †." For example: the debtor, having occaſion to incur expenſe for the nuptials of his ſon or the like, thus addreſſed the lender, "advance me this loan without intereſt; after completing the rites intended, I will repay it, making up the ſum by the ſale of effects, or by alms any where obtained:" the borrower thus contracted the debt: if it be demanded, but not paid, while he remains in the country, it bears no intereſt for one year; but after that period it bears intereſt. Such is the purport *of the text*. Then what intereſt ſhould debtors pay? The Sage propounds it, "intereſt as allowed;" as declared by the law concerning creditors, at the rate of an eightieth part and ſo forth, in the order of the *ſeveral* claſſes, *Bráhmanas* and the reſt. This interpretation of the text of VISHNU is approved by CHANDESWARA. The diſtinction reſpecting ſuch, as *fraudulently* go to another country, will be mentioned (Section III).

By the negative in the expreſſion, "let no lender receive, &c." is it ſignified that he cannot receive it; or joined to the imperative, does it ſignify, that duty is not fulfilled, and *conſequently* that the receipt is immoral? Since no other law intimates the receipt *of ſuch intereſt* within the year, there is no contradiction: and as there is no law to remove the doubt, how ſoon a loan, which has been advanced without intereſt, ſhall bear intereſt, it is ſignified that intereſt ſhall not be received within the year. Thus, if a creditor, who had delivered a loan without intereſt, aſk intereſt from the date of the loan when payment is tendered after

* Since the lender ſins by exacting more than legal intereſt, the Commentator thinks a borrower ſins by taking advantage of the times to pay leſs than legal intereſt.

† Cited in its proper place in Section III. (V. 52.)

after the lapſe of the year, then payment of intereſt for the period exceeding one year ſhall be enforced by the king: and in this caſe, the year conſiſts of three hundred and ſixty days, counted by *ſâvana* time; as deduced from the texts already quoted from the *Malamâſatatwa* (Section I, gloſs on text XXV).

"He may take intereſt, which is unapproved" (XLI); which is not preſcribed to lenders by the law, ſuch as intereſt upon intereſt, and the reſt; but not any other intereſt except intereſt upon intereſt, and the reſt: this is an explanatory precept. However, the receipt of intereſt upon intereſt, and the reſt, is immoral, as declared by the text of VRĬHASPATI (XXXV 7).

Is it not impoſſible there ſhould be intereſt different both from intereſt upon intereſt, and the reſt, and from intereſt at the rate of an eightieth part, and ſo forth: how can an explanatory precept have been delivered forbidding other ſorts? If a man have contracted a debt at the time of harveſt for the ſupport of his family, and have hoarded a large quantity of grain; and the price happening to be greatly enhanced, ſhould the creditor at the time of repayment ſay, "the price of grain which was purchaſed by thee with my money was doubled in five months, pay me therefore double the principal beſides intereſt thereon:" this explanatory precept is intended to prevent ſuch a tranſaction. It is accordingly uſual in ſome diſtricts, for lenders, who deſire greater profit, to require from the borrower a ſtipulation for the current price in the month of *'Aſhhâd'ha*.

If ſuch be the meaning, what is the ſcope of the text of MENU above cited (XLII)? It is a rule for intereſt on a debt contracted without *an agreement for* intereſt; for if a debt ſo contracted remain long unpaid, it bears intereſt. This will be particularly diſcuſſed in another place (Section III). The text is an anſwer to the queſtion, whether intereſt ſhall in this caſe be taken at the rates preſcribed by the law, or in the form of ſtipulated intereſt *(cáritá)* and the like: intereſt beyond the rates preſcribed by the law, which ſuggeſts the mode of ſubſiſtence by money-lending, is invalid. Though aſked by the lender, it ſhall not be obtained. A reaſon is given: becauſe the wiſe have declared thoſe rates, as fixed by the law, the *proper* way of lending: hence a creditor of the ſervile claſs is entitled *at moſt* to five in the hundred.

If

If the rate fixed by the law be the only *proper* way of lending, is not *other* intereſt, even though promiſed by the debtor in a time of extreme diſtreſs, invalid? Therefore does the Sage add, "different." Here again fixed rates muſt be brought forward; "different from the rates fixed by mutual conſent of lender and borrower." Intereſt different from that, and exceeding the legal rates, is invalid. Such is the ſenſe of the text (XLII). After how many days does a debt, which remains unpaid, bear intereſt? It is anſwered: "let no lender receive intereſt ariſing from a debt which has not exceeded one year." Or the negative may be underſtood in the phraſe, "take intereſt which is unapproved;" and the ſenſe is, "let no lender receive intereſt unauthorized by the law." What is that *intereſt?* To this queſtion the legiſlator replies, "intereſt upon intereſt, &c." and the negative here denotes *the* immorality *of ſuch conduct*. Conſequently, ſhould a creditor be deſirous of receiving intereſt unauthorized by the law, ſuch as intereſt upon intereſt, and the like, he can receive it, but he commits a moral offence. Accordingly VRĬHASPATI declares it reprehenſible (XXXV 7). This interpretation is conſiſtent with the opinion of CULLÚCABHATTA, and ſhould be admitted. Ultimately there is no difference.

It ſhould not be objected, that whatever interpretation has been delivered by ancient authors, that only ſhould be admitted; becauſe an opinion not matured cannot be well adopted. There is no proof to ſupport their interpretation. Nor ſhould it be ſaid, this text is *ſufficient* authority. It is evident, that the text admits of another interpretation: and it muſt remain a doubt what interpretation ſhould be eſtabliſhed, ſince their comments are diſcordant. Nor ſhould it be objected, what proof is there to ſupport the interpretation propoſed? It is a *ſufficient* argument that the text may coincide with the rule of VISHNU (LII); for it is a maxim *in logick*, that propoſitions ought not to be ſeparated in ſenſe, when their coincidence is poſſible. Nor ſhould it be affirmed, that VISHNU's rule may be otherwiſe explained. It is a maxim, that an obvious meaning is to be preferred to a forced conſtruction: it would therefore, ſay theſe lawyers, be irregular to explain it otherwiſe.

On this *expoſition of the law*, *cáyicá* is of two ſorts; the *cáyicá* of

of VYÁSA, and the *cáyicá* of NÁREDA. *The first*, noticed by VYÁSA, by VRĬHASPATI, and by YÁJNYAWALCYA *also* according to the *Dípacalicá*, is in the nature of a usufruct; but distinguished from interest by enjoyment, in the manner already stated: the use of a pledge is interest by enjoyment (XXXVII 3); the benefit arising from the labour of a slave or the like, not pledged, is *(cáyicá)* corporal interest. When the agreement runs in this form, " this cow shall be milked by you one day in each month, and that shall be the only interest on the debt," such interest is named *cáyicá*. Since there is no contract of hypothecation, it is not the use of a pledge. The owner may pledge the same cow to another creditor; and he may pay the interest otherwise: and another chattel may be required as a pledge for the same debt, to give confidence to the lender.

Again; a debtor may himself work two or three days *for the benefit of his creditor*. In that case also, *the benefit of his labour* is the interest named *cáyicá*. Here the word *(cáyá)* " body " is indeterminate: and the use of a boat or the like, for *the* transport *of goods*, in lieu of interest, is also *cáyicá;* and that must be allowed so long as the principal remain unpaid (XXXV 6).

When the benefit arising from *the labour of* a slave has been settled as *cáyicá* interest; and that slave, through indolence or inability, performs no labour, but pays money equal to the value of his labour, should that money be received as interest or not? and if it be received, under what description of interest does it fall? It is answered, the money is merely an equivalent for his labour; it should be received and considered as *cáyicá* interest.

If a moneyed man tell some merchant, " receive a hundred *suvernas* from me, and trade with them; whatever be the profit, one half the residue, after paying me interest, must be delivered to me, and thou shalt take the other half for thyself: but, if the capital happen to be lost, the loss shall be solely thine, and I shall recover the whole principal from thee." On these terms the loan is advanced; and the man acts accordingly. Is money so advanced a loan or not? If it be a loan, is the moiety of the profit which is receivable *by the creditor*, interest or not? It is said, since both *the requisites of a loan*, the continuance of the *creditor's*

property

property in the money *lent*, and *the receipt of* a gain, have place in that contract, nothing prevents its being deemed a loan: however, the moiety of the profit which is receivable *by the creditor*, is not intereſt, but profit ariſing from commerce.

What exertion for gain is in this caſe made *by the lender?* Any merchant tells a public officer, "you muſt prevent the exaction of exorbitant duties payable at wharfs and the like; in conſideration of which, I will give you a quarter of my profits:" as in this caſe the protection afforded by that officer againſt the exaction of exorbitant duties, is the exertion for which he receives a quarter of the profits, ſo, in the firſt caſe, the act of furniſhing a loan as a capital for trade, and the ſtipulation then made, conſtitute the exertion on the part of the lender. Or, in both caſes, the money *paid* is ſimilar to gratuitous preſents of bread, fruit, mangoes, fiſh, and the like: it is not *cáyicá*, ariſing from the perſonal labour of the borrower; nor intereſt of its own nature, ariſing from increaſe *of ſtock;* for that is not named in the law as a ſpecies of intereſt, nor is it deſcribed under any other kind of intereſt.

If the merchant trade in *tila*, gold, or the like, and the lender receive from the merchant half the *tila*, gold, or the like, gained in commerce; in that caſe, ſince the merchant is independent, the lender's ownerſhip is the only motive for the delivery of the thing. The delivery and receipt are conſequently civil acts; and the receipt is no acceptance of things beſtowed for religious purpoſes. There is no conſequent ſin in receiving thoſe things. Thus ſome expound the law.

VII. *The ſeveral Expoſitions conſidered.*

But if the merchant fraudulently withhold the moiety of the profit, he is a promiſe-breaker, and ſhall be compelled by the king to deliver it. This creditor, however, exacts more *than legal* intereſt from the debtor's neceſſities. But intereſt, which is exacted at *the* pleaſure *of the lender*, whether at legal rates, or in the form of ſtipulated intereſt, and the like, if it be unreceived for ſome time, can only be taken to an amount ſufficient to double the principal.

If the money be advanced on theſe terms, "take from me a

hundred

hundred *ſuvernas*, and trade with them on our joint account, but intereſt muſt be paid me;" that commerce is carried on on account of both parties, and the ſhares muſt be ſo diſtributed as may have been agreed. But if the lender add, "ſhould the capital happen to be loſt, the loſs ſhall not fall on me," and the merchant acquieſce *in thoſe terms*, the whole loſs muſt be borne by him, through the exigence of his affairs, *which compelled him to accept ſuch terms;* but if his aſſent were extorted by force, the loſs ſhall not be borne by him: this method is conſiſtent with the reaſon of the law.

In the caſe ſuppoſed, if the merchant who borrows the money trade in ſalt, lac, or the like, with or without the knowledge of a *Bráhmana* who lent the money, the ſin falls on that *Bráhmana* according to *the* circumſtances *of his knowledge or ignorance of the particular trade carried on.* This is *a* demonſtrated *rule.*

On the doubt, whether it be money advanced for commerce, or money lent, it is ſaid; one half is a loan veſting temporary property in the uſer, and the other half is money advanced for commerce. Hence there is, in this caſe, trade in partnerſhip, and a combination of debt and commerce: to receive intereſt on the whole ſum, without a previous agreement, would be therefore contrary to law. But if the lender deliver the money with this ſtipulation, "the whole ſum ſhall be a loan in thy hands, and it ſhall produce to me half the commercial profit," there, ſince the two acts (of advancing a ſum for trade and delivering it as a loan) are incompatible, the contract of loan ſhall prevail; for the property of the former owner is diveſted *by that act.* He ſhall not therefore receive half the commercial profit, but intereſt on the whole ſum: of the profits of trade ſo much only, as the merchant may voluntarily give, can be received by the lender. If the capital happen to be loſt, whether the exonerating clauſe ("if a loſs happen, it ſhall not fall on me") be expreſſed in the agreement or not, the loſs does not fall on the creditor, but on the debtor alone. But if an agreement were made for the payment of half the commercial profit by the debtor, it muſt be paid to fulfil the agreement, as above mentioned. This has been ſufficiently explained.

The *cáyicá* of NÁREDA ſhould be explained as in the gloſs

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of CHANDÉSWARA, from the ſenſe of the word *ṡaṡwat*, repeatedly, or again and again: or the method approved by HELÁYUDHA, the *Mitácſhará*, MISRA and others, may be followed: thus *cáyicá* is intereſt payable daily; and the word *ṡaṡwat* ſignifies long, as in the example "*ṡaṡwatih ſemáh*, many years," and in other inſtances. According to VRĬHASPATI, it is included in the deſcription of hair-intereſt, and muſt be paid ſo long as the principal remain undiſcharged. In the text, it is particularly mentioned, "at the rate of a *pana*, &c." (XXXVI 2) to remove the doubt whether intereſt ſhould be received daily at the proportional rate of an eightieth part *by the month*: more or leſs *than that rate* is therefore taken as hair-intereſt; and ſuch is the current practice. This being the caſe, the *cáyicá* of NÁREDA, as explained by CHANDÉSWARA, falls under the deſcription of *(cáritá)* ſtipulated intereſt.

Were it ſo, would it not be unpaid; for the text of CÁTYÁYANA expreſſes, "in no other caſe whatever muſt ſtipulated intereſt be paid" (XXXVII 3)? Payment being requiſite when the period, *for which the ſum was lent*, had elapſed, the debtor's inability to make immediate payment occurred *as a circumſtance of diſtreſs*. Therefore intereſt then ſettled, *as the conſideration of forbearance*, muſt be paid, though it be *(cáritá)* ſtipulated intereſt. But greater intereſt, promiſed before the period had elapſed, in conſequence of menaces, need not be paid.

But *cálicá* is regulated by the rate of an eightieth part, and ſo forth: with or without an agreement, it is intereſt receivable month by month, on the concurrent opinions of many authors. According to this interpretation, if a creditor be deſirous of receiving his intereſt on a loan, of which the intereſt has not ceaſed *becauſe it has not yet equalled the principal*, he muſt take *(cálicá)* periodical intereſt. In that caſe there is no limitation of a ſubſequent period, *beyond which intereſt may not be received*; a diſtinction aſſumed by HELÁYUDHA. Here it ſhould be noticed, that the word "month" is merely a general inſtance: accordingly MENU ſtates periodical intereſt generally. Hence that intereſt, which is receivable every half-year, is alſo *cálicá*. Conſequently, whatever intereſt is received from time to time, at ſhort periods, before the debt is diſcharged, is *cálicá*. But this intereſt may be included under *(cáritá)* ſtipulated intereſt.

However,

However, *sic'hávriddhi*, which ought to be received day by day, but in ſome inſtances is paid by debtors to creditors for many days at once, to ſave trouble, is not *(cálicá)* periodical intereſt. The *cáritá* of CATYÁYANA has been ſufficiently explained.

It ſhould be remarked, that intereſt at the rate of twenty in the hundred, payable by ſeafaring traders and the like, and at the rate of ten in the hundred by thoſe who travel through vaſt foreſts and the like, is *(cáritá)* ſtipulated intereſt. It ſhould not be aſked, how can intereſt at the rate of twenty in the hundred, and ſo forth, be deemed *cáritá*, as this is deſcribed by NÁREDA (XXXVI. 3), ſince CHANDÉSWARA, in his gloſs on the texts concerning thoſe rates of intereſt, mentions, that intereſt at the rate of twenty in the hundred, and ſo forth, muſt be paid, even though not expreſsly promiſed by ſea-faring traders and the reſt when the loan was received? As intereſt at the rate of two *panas* a month for one ſilver coin, though not expreſsly promiſed, is paid by the immemorial cuſtom of the country (on the ground, that intereſt, formerly ſettled by certain debtors, expreſsly promiſing it to their reſpective creditors, is conſidered in practice as ſtipulated intereſt, and is therefore now valid by tacit conſent, though not ſpecified by an individual borrower, and is adjudged by arbitrators quoting *for their authority* approved uſage); ſo in this caſe, the text (XXXII) is cited as proof of cuſtomary intereſt. Elſe law muſt be eſtabliſhed on another foundation than ſcriptural *authority*.

Accordingly MENU does not ſpecify the rate of twenty in the hundred, and ſo forth; but ſays, "whatever intereſt ſhall be ſettled by men well acquainted with ſea-voyages, &c." (XXXIII). Conſequently this ſenſe is deduced *from the text;* ſuch intereſt only as is ſettled by merchants ſhall be paid: if the party himſelf have not ſtipulated the rate, that intereſt only, which has been promiſed by former borrowers, as inſtanced by YÁJNYAWALCYA (XXXIII), muſt be paid. In the text of NÁREDA (XXXVI 3) the word "debtor" muſt be conſidered as denoting any perſon who contracts debts, and follows the practice derived from *the example of* eminent perſons.

What is the rate for thoſe who do not traverſe the ocean, but croſs the SINDHU and other great rivers? It is anſwered, they

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are travellers by dangerons routes (explaining "*cantáragáh*" in a general ſenſe, inſtead of reſtricting it to travelling through vaſt foreſts); they muſt therefore pay ten in the hundred. The meaning is this: ſuch as travel by difficult roads, where life is endangered, neceſſarily obtain greater profit, and therefore pay higher intereſt; but thoſe who voyage by ſea (a ſtill more difficult route, in the higheſt degree tremendous, where life is expoſed to the utmoſt danger), tranſporting large cargoes with great trouble, certainly obtain ſtill greater profit; twice as much ſhould, therefore, be paid by them. When no ſpecial agreement has been made reſpecting the rate of intereſt, what ſhould be received from thoſe traders who neither travel by dangerous roads, nor traverſe the ocean, but buy and ſell in their own country? Intereſt at the rate preſcribed by the texts, which ſpecify an eightieth part *by the month*; for this text (XXXII) cannot be extended to a general ſenſe. But if they promiſe to give greater intereſt, then indeed ſuch intereſt ſhould be paid (XXXIII). Since CHANDÉSWARA expounds the phraſe in this text, "men well acquainted with ſea voyages," as a mere inſtance ſuggeſting a trader in general, that general ſenſe is the ground of this inference, coinciding with the *latter part of the* text of YÁJNYAWALCYA, "or whatever intereſt has been ſtipulated by them" (XXXII.)

If merchants, whether trading by ſea, by dangerous routes, or in their own country, receive a loan from a money-lender, with or without a ſtipulation for high intereſt, in expectation of great profit; but if they be afterwards accidentally diſabled from travelling for the purpoſes of commerce, and remain at home, or die; in that caſe, with what intereſt ſhould the principal ſum be received by the creditor from thoſe perſons who have been *thus* unable to trade, or from their ſons? It is anſwered, that ſometimes thoſe who travel through vaſt foreſts remain afterwards at home ten or fifteen years; when they borrow for the occaſions of buſineſs, without ſtipulating the rate of intereſt, it would be inconſiſtent with the practice of good men to require from them payment of ten in the hundred. By "thoſe who travel through foreſts," ſhould be underſtood "thoſe who *actually* perform a journey through foreſts:" ſince there is no journey then performed through foreſts, intereſt at the rate of ten in the

 hundred

hundred ſhould not be paid. So in the caſe propoſed, ſince there is no actual performance of a journey by dangerous routes, ten in the hundred ſhould not be paid, but intereſt at the rate of an eightieth part, and ſo forth. But where the merchant actually travels through vaſt foreſts, ſince the whole tranſaction, from his reſolution to undertake the journey, until the concluſion of the journey, is conducted by him *with that view*, a debt contracted by him, even before the journey *be actually undertaken*, is contracted by one who *actually* performs a journey by dangerous routes; in that caſe, therefore, payment of ten in the hundred is legally required. Sea-faring, "*Sámudra*," here bears its regular ſenſe, as a derivative from the noun *(Samudra)* ſea; and a ſimilar expoſition is eſtabliſhed from its aſſociation in the text (XXXII), "ſuch as traverſe the ocean, twenty in the hundred."

If the intereſt have not been ſettled, legal intereſt only ſhould be taken; if it have been ſettled, a ſimilar expoſition is eſtabliſhed from the import of the words "well acquainted with ſea voyages, and with times and with places," in the text of MENU (XXXIII). Therefore, in this caſe alſo, intereſt at the rate of an eightieth part, and ſo forth, ought alone to be paid; but intereſt, promiſed by the debtor, muſt be paid (XXXVII). However, if it be promiſed through compulſion, it need not be paid, as ſhewn by the ſequel of the ſame text (XXXVII 2). But when men travel for the purpoſes of commerce, ſuch intereſt, though promiſed through compulſion, muſt be paid, elſe the deſcription ſtated in the text (XXXIII) would be unmeaning, "men well acquainted with ſea voyages."

Is it not *true*, that ſtipulated intereſt need only be paid when promiſed in a time of diſtreſs? (XXXVII.) Yet, in this inſtance, the borrower experiences no diſtreſs; on the contrary, it is a time of exertion for gain. How then can it be intended by CÁTYÁYANA, that intereſt promiſed in ſuch circumſtances ſhould be paid? *The objection is* not *well founded:* "a time of extreme diſtreſs" is mentioned by way of illuſtration; elſe, ſhould a man receive a loan from a money-lender, on a ſtipulation of more *than regular* intereſt, to accompliſh the conſtruction of a houſe or the like, which he is anxious *to erect*, for *the ſake of*

 reward

reward in a higher world, he would not pay ſuch greater intereſt, becauſe it was not ſtipulated in a time of extreme diſtreſs; but he who promiſed greater intereſt for the ſake of performing his father's obſequies, or celebrating his daughter's nuptials, or the like, muſt pay it: which would be contrary to reaſon. The opinion of CHANDÉSWARA and others is therefore accurate, that CÁTYÁYANA only declares undue that intereſt which has been promiſed through compulſion.

Where a trader, having promiſed, or not having promiſed, greater intereſt through compulſion, traverſes foreſts or ſeas in expectation of great profit, but *ſuch* great profit happen not to be *obtained*, what intereſt ſhould in that caſe be paid? It is ſaid, whether great profit have been obtained or not, the journey through foreſts or the like is *performed;* therefore intereſt at the rate of ten in the hundred, and ſo forth, or *any* intereſt which has been promiſed, muſt in ſuch a caſe be paid. All this is deduced from the expoſition of the text. But in fact the ſettled rule ſhould be argued from the immemorial cuſtom of the country.

Wheel-intereſt is explained by CHANDÉSWARA, where the debtor, unable to diſcharge the arrear of intereſt, promiſes to pay it with intereſt; that intereſt, which is ſo promiſed, is *(chacra vriddhi)* wheel-intereſt. It ſhould be underſtood, that, if the creditor, actually receiving the amount of intereſt from the debtor, at the very ſame time lends again that very ſum to the debtor, it is not wheel-intereſt; for the amount of intereſt becomes, in this caſe, a principal ſum. Accordingly it is ſaid, in the following text of MENU, "He who cannot pay the debt."

XLVIII.

MENU:—He who cannot pay the debt *at the fixed time*, and wiſhes to renew the contract, may renew it in writing, *with the creditor's aſſent*, if he pay all the intereſt then due*.

For if he pay the ſum into his creditor's hands, and, having torn the former writing, and executed another writing, receive the ſame *ſum*; the phraſe "may renew it in writing," would

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* See CLVII, where this verſe is again cited.

not be employed. Since the debt is different from the former debt, the writing is then executed for the debt then contracted, without connection with the former writing. But if he do not discharge the sum, he renews the contract in writing for that same debt with interest, after cancelling the former writing. If an artful creditor himself deliver other money into the debtor's hands, and bid him pay the *former* debt, and the debtor do so, surely in that case it is not wheel-interest; interest upon interest should only be considered as valid when no such artifice is practised. This should be determined by the wise. Other *points* will be stated in the chapter on the Recovery of Debts.

It has been mentioned more than once, that hair-interest is *interest* receivable day by day, in consequence of an agreement in this form, " I will pay it daily." Interest by enjoyment is the use and benefit of a pledged house and the like (XXXV 5): " the rent, or use and occupation *of a house*, and the produce (*`sadas) of a field*," according to the literal sense of the verb *sad*, cut down or reap, as remarked by MISRA. It should not be objected, that interest by enjoyment should be included under *cáyicá*, because VYÁSA intends a generic description (XXXIX). Why then is interest by enjoyment specially mentioned by CÁTYÁYANA (XXXVII 3) under another name, " use of a pledge?" and why are *cáyicá* and *bhógalábha* separately mentioned by VRĬHASPATI (XXXV)? *but* Sages cannot be censured for the exercise of their *legislative* authority in making a distinction, for the sake of the rule to be delivered, that a pledge is not released so long as the debt be not wholly discharged. Corporal interest, hair-interest, and interest by enjoyment must be paid, so long as the principal remain unliquidated (XXXV 6). If the payment of hair-interest happen to be discontinued at the end of a few days, or if the corporal interest be not received, or if a pledged field or the like be damaged by the act of GOD or the king, in such cases, when the debt is *afterwards* liquidated, hair-interest, calculated from the date of the loan, must be paid; the value of corporal interest must be made good; another pledge must be delivered for use and occupation; or, if the debtor do not *deliver another pledge*, the value of usufruct must be made good. A full explanation of Pledges may be seen under their proper head. (Chap. III.)

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If ſuch be the caſe, does it not contradict the text of MENU (XLIII); for the inferible ſenſe of the law is, that a creditor ſhould not receive more than double the principal paid at once? No; for the original period for the receipt of hair-intereſt is *the cloſe of* each *ſucceſſive* day: the text is only applicable to other caſes. Is it not ſeen, in ſome countries, that hair-intereſt is not received ſo long as the principal remain undiſcharged; but is only received for a ſtipulated period, or for a certain number of days? To reconcile this apparent difficulty, the text of NÁREDA is adduced; "but the rate cuſtomary in the country, where the debt was contracted, may be different" (XLV.)

If a debt have been contracted on a promiſe of hair-intereſt, and half the principal have been diſcharged at the end of a long period, what kind of intereſt is afterwards adjudged? It is fit that half the hair-intereſt ſhould be paid; for it is not proper that the whole intereſt be ſtruck off when the whole principal is not diſcharged, nor that the whole intereſt be paid when ſome part of the principal has been diſcharged: and in the caſe of corporal intereſt alſo, if the uſe and profit of a female buffalo affording much milk, or of a horſe or the like carrying great burdens, have been aſſigned as *cáyicá* intereſt; in that caſe, a part of the principal being liquidated, the debtor may aſſign the uſe and profit of another milch buffalo, or of another horſe or the like, and not allow the profit of that horſe and buffalo; for there is no *law* to ſhow the neceſſity of allowing the uſe and profit of the thing originally aſſigned.

But, in the caſe of *(ád'hibhóga) a loan on* the uſe of a pledge, a debtor cannot obtain the releaſe of the pledge, however valuable, ſo long as the principal remain unliquidated (CII). For this reaſon, corporal intereſt and intereſt by enjoyment have been diſtinguiſhed: and the diſtinction is well explained, as conſiſting in the exiſtence or non-exiſtence of a contract of hypothecation.

Where the harveſt is fixed as the period of a loan in grain, under the rule of HÁRÍTA (XLIV 2), as expounded in the *Retnácara*, the creditor can only receive double the principal *in kind;* intereſt therefore cannot, in this caſe, be received at the rate of an eightieth part, and ſo forth, becauſe the *general* law for an eightieth part is oppoſed by the *ſpecial* rule of HÁRÍTA.

 This

This inference ſhould be queſtioned, for ſuch is not the meaning of the *Retnácara:* the rule of HÁRÍTA is there inſerted under the head of *(cáritá)* ſtipulated intereſt; and ſtipulated intereſt does not exclude the rate of an eightieth part, and ſo forth: for the grounds of excluding the rate of an eightieth part, and ſo forth, another authority than ſcripture muſt *therefore* be eſtabliſhed. The rule of HÁRÍTA ſhould for this reaſon be conſidered as relating to ſtipulated intereſt regulated by the practice prevalent among former eminent perſons, not as eſtabliſhing a rate for intereſt on his own authority. Accordingly, ſhould any trader borrow grain on a ſtipulation for intereſt at the rate of an eightieth part, and ſo forth, and ſelling it conduct commerce, even that is *a* fit *tranſaction.*

How then ſhould the text of NÁREDA (XLV) be applied? for it is thus expounded according to the *Retnácara:* 'this rate of intereſt, an eightieth part of the principal, and ſo forth, is univerſal, becauſe it is authorized by the law; but a rate fixed by the immemorial cuſtom of a country, is different therefrom, and is not univerſal, for ſuch local cuſtom only ſubſiſts in particular countries: accordingly in ſome diſtricts grain is currently received back with an advance of half the principal; in others, with a quarter: but if it were the cuſtom of countries that twice the principal alone ſhould be accepted, it would be ſo in all *countries.*' *This objection is* not *well-founded;* the particular practice of one country is ſtated in the rule of HÁRÍTA, *not an* univerſal *rate.*

Grain doubled at the harveſt is not the higheſt *limited* intereſt; but is either legal, or ſtipulated intereſt, according to the opinion *which may be followed.* The higheſt intereſt *ſtated* trebles the principal; that is, ſo much as trebles the principal is the higheſt *allowable* intereſt. "So of wool and cotton;" that is, on theſe, as on grain, ſo much intereſt as trebles the principal is the higheſt *allowable* intereſt, and intereſt doubling the principal is different.

"Wool or hair of ſheep and the like;" in anſwer to the queſtion, when is the principal doubled, ſince there is no harveſt of wool? the Sage adds, "in one year" (XLIV). In regard to fibres of graſs, and the like, it is alſo the ſame: "in one year" is underſtood; and graſs and the like are alſo ſimilarly doubled in one year; and ſome hold, that the higheſt intereſt on graſs and the like

like is eight fold of the principal. But others think grafs and the like are increafed eight fold, and bear intereft no longer than until the debt be made octuple: fuch, therefore, is the higheft intereft on thefe articles; and the word "fo" is not extended to this part of the text, *to declare that intereft on grafs doubles the principal in one year.* This is founded on the coincidence of the text with that of Vrĭhaspati (LXVII); for "length of time" there denotes the higheft *limit of* intereft. Why the text (XLIV) is expounded by Chandéswara, "on grafs and the like, the intereft is eight fold for one year," may be queftioned.

In practice the receipt of grain doubled at the time of harveft is very reprehenfible. Its partaking of the nature of *(cáritá)* ftipulated intereft is the ground of this notion, fince no other grounds of it are perceived. Or intereft on grain doubling the principal at the time of harveft is named ufury.

XLIX.

Náreda:—But the *rate of* intereft, which has been mentioned, is confidered as ufury on grain*.

The meaning of the text of Vrĭhaspati (XXXV 7) is this: "the ufe of a pledge after twice the principal has been realized, and the other two cafes there ftated, are ufurious;" this is one propofition: that ufury is reprehenfible, is another propofition *of the text.* Confequently, the receipt of grain doubled *in one feafon* being ufurious, it follows that it is reprehenfible. But the receipt of intereft at the rate of an eightieth part and fo forth fhould be held blamelefs, by reafon of the practice eftablifhed by eminent perfons: and intereft on grain, doubling the principal, appears to be *(cáritá)* ftipulated intereft; elfe it would be exclufive of the fix forts of intereft *propounded by Sages.*

Under the term "grain," peafe and the like, as well as barley and the reft, are comprehended; for Amera fays, "peafe and the like are grain in the pod, and barley and the reft are grain in the ear."

 If

* The laft hemiftich of a text which is again cited, V. lviii. 2.

If thoſe who travel through foreſts and the like borrow grain, at what rate ſhould intereſt *be paid?* Whatever intereſt they ſettle, ſuch intereſt only ſhould be paid (XXXIII). But if no intereſt be ſettled, then indeed, ſince there is no law for the receipt of more than double the principal, intereſt only doubles the debt. It ſhould not be argued, that the text of HÁRÍTA (XLIV) ordains twice or thrice the principal payable only by ſuch as traverſe foreſts and the like. No author has ſo explained the text; but, without ſpecifying the eightieth or other legal rates, it marks the intereſt uſually paid by all perſons on *loans of* grain.

Some lawyers remark; when a man has borrowed grain to be repaid two-fold, but is unable to diſcharge the debt at the time of harveſt, and the debt long remaining unpaid, if arbitrators adjudge the payment of three times the principal, at the *current* price of a particular month, together with intereſt, in that caſe the trebled principal is ſuggeſted by the text of HÁRÍTA and others (XLIV, &c.); the valuation is grounded on local cuſtom, and the intereſt is compound intereſt: but if they adjudge payment of four times the principal with intereſt, the quadrupled principal is ſuggeſted by the text of VRĬHASPATI (LXIII).

Yet in fact all this depends ſolely on local cuſtom; for the text of HÁRÍTA, and that of VRĬHASPATI, propound the higheſt legal intereſt. At the fit period for limited accumulation of intereſt, whether three times or four times the principal be then received, the intereſt is legal; but the receipt of compound intereſt, antecedent to a promiſe from the debtor, is not authorized by law. The fit period for limited accumulation will be declared under the title of Limits of Intereſt.

Admitting that compound intereſt is reprehenſible by general law or local uſage, *ſtill the text* (XXXV 7,) *which declares uſurious further benefit* after the principal has been doubled, intends loans in gold or the like; for, ſince the higheſt accumulation of intereſt on clothes and other commodities is declared to extend to three times the principal and ſo forth, it is wrong to cenſure the receipt of three times the principal *in ſuch caſes.*

A *Bráhmana* aſks a loan from another *Bráhmana*, and the lender, exacting a ſtipulation for intereſt at the monthly rate of a *pana* in a *purána*, delivers the loan, and the other pays the debt within

within the year; is the receipt of ſuch intereſt in this caſe reprehenſible or not? It is ſaid, the receipt of ſuch intereſt is evidently immoral, ſince *(cáritá)* ſtipulated intereſt itſelf is immoral, according to the gloſs of CULLÚCABHATTA on the words "any intereſt which is unapproved" (XLI); and it is held ſo by MISRA, becauſe the borrower is oppreſſed by the exaction of exceſſive ſtipulated intereſt and the like.

Periodical intereſt and corporal intereſt are alſo termed immoral by CULLÚCABHATTA: how does that apply; for if the borrower diſcharge the debt within the year and pay ſuitable intereſt, there is nothing blameable in *the receipt of* that *intereſt?* The anſwer is, under the authority of the text only; *but* it is not deemed immoral if received from time to time; and the text of VRĬHASPATI is adduced to connect the ſenſe, ſhowing the immorality of periodical intereſt and the reſt, in certain circumſtances; not of ſtipulated intereſt, *which is univerſally cenſured.* Accordingly CULLÚCABHATTA ſays, "ſtipulated intereſt is immoral, even though it have been *freely* ſettled by the debtor in a time of extreme diſtreſs, and by the creditor through kindneſs." It is conſequently an improper proceeding of a lender wilfully to violate the law and exact a promiſe of more than legal intereſt. On other expoſitions alſo, ſince the rate of an eightieth part and ſo forth is alone legal as the primary rate, the receipt of ſtipulated intereſt at any other rate is not laudable.

If a debt be contracted with an agreement in this form: "At the end of three months I will repay one coin and a quarter, lend me now one coin;" the intereſt amounting to a quarter *of the debt* is *(cáritá)* ſtipulated intereſt, for the rate of intereſt and period of the loan are ſettled by the debtor. In the caſe propoſed by CHANDÉSWARA, intereſt on a loan advanced with a previous ſtipulation in this form, "if thou wilt pay intereſt during one year, or half a year, or the like, then only will I advance the loan," is alſo a ſort of ſtipulated intereſt; for, in this caſe, there is a promiſe of paying *a certain amount of* intereſt at the rate of an eightieth part and ſo forth. But in fact reaſon ſhows, that, excepting the *regular* method of receiving the principal with ſuitable intereſt, every diſingenuous proceeding is immoral.

VIII.

VIII. *On the Aſſignment of Bonds, &c.*

In ſome inſtances, a creditor has demanded his money from his debtor *in theſe words*, "Pay the debt of a hundred *ſuvernas*, which is due to me;" but the debtor has not been able to diſcharge it; afterwards, the creditor, reduced to poverty by the circumſtances of the times, or *even without neceſſity*, of his own accord, ſells the written contract for that debt to ſome *other* perſon: this practice is not immoral; for it is not forbidden by the law, nor does it diſtreſs the debtor.

To the queſtion, what is ſold in the caſe ſuppoſed? the anſwer is this: not the mere written leaf, for it could not bear ſo high a price; nor would the purchaſer, on a purchaſe of the written leaf only, be entitled to receive the ſum ſtated in the writing. Nor *is* the debtor *ſold;* for the creditor has no property in *the perſon of* his debtor. Nor *is the* money *which has been* lent by the creditor *ſold;* for *his property in* that money is already deveſted; or even though it be not *wholly* deveſted, the ſeller has not at that time an *indiſputable* property therein. Nor *is* the money which will be *ſubſequently* paid, and which is receivable by the creditor, *ſold;* for it cannot in ſuch a caſe be money receivable by the creditor, ſince the purchaſer, *not the ſeller*, will have property in the money, which will be paid by the *preſent* uſer *or debtor*. It is therefore held by ſome lawyers, that the money which will be paid by the debtor, is acknowledged as the tranſitory property of the lender; but, in conſequence of the price now received, and of the agreement made to that effect, that property will be deveſted and transferred to the purchaſer: accordingly a ſale, conſiſting in the receipt of a price, is now eſtabliſhed from the conſequences which are to follow, by means of *taking into conſideration* paſt events*: and the ſeller has property in the price *received;* for,

* The philoſophical opinion to which I conceive this alludes, is more expreſsly ſtated in other places. A paſt event, that is, its completion, exiſts metaphyſically as a cauſe of future events. Strict logicians do not admit this metaphyſical exiſtence, and are therefore at a loſs to connect cauſes and effects not immediately conſecutive. To ſolve the difficulty, they have recourſe to the relation between cauſe and effect, which they place in philoſophical arrangements under the category quality.

for, in consequence of his present expectation of a future receipt, the buyer assents to the transfer of property in the price to the seller. But that is wrong; for, should the debt be never actually paid, in consequence of the debtor's decease or the like, such a transitory property could not be established: since the money payable by the debtor is become null, the sale of it is also null, and the receipt of the price would be therefore invalid.

We think that this is a secondary sale of the promise of payment, like a gift or sale of *moral* purity. Thus, after the receipt of a loan, the lender's property being devested, and property vested in the borrower, the promise of payment is the only ground for the repayment of the loan when its period has elapsed; and that promise disposes the debtor to give effect to the creditor's *revivable* property, through fear of incurring guilt by withholding payment of the money due to the creditor, or in consequence of a complaint preferred before the king, or the like: in the case supposed, that *promise* bought by any person would induce guilt *in the debtor*, if he withheld payment of the debt from the person who had purchased *the promise;* and, exciting his apprehensions of incurring such guilt, or by means of a suit preferred before the king, or the like, it disposes the debtor to give effect to the purchaser's *contingent* property.

It should not be objected, that payment made to the purchaser would be a violation of promise on the part of the debtor, who had said *to the creditor*, "I will pay the money unto thee." It is a rule, that the reason of the law extends to the representative. There is no breach of promise in his paying the money to the purchaser, who is the representative of the creditor; as there is none on the part of him who has promised to give jewels and the like, and who pays their value.

When a field or the like is sold, an interest of the nature of property, similar to the former owner's property, is vested by the sale in the other party; but in this case, by what secondary notion of a vested interest does it become a secondary sale? From the secondary notion of something producing a lien on the guilt of the debtor if he withhold payment of the money, it is *shown to be a* secondary *sale*. Consequently, should the debtor and his offspring happen to die without paying the debt, the loss falls on the purchaser, as *it would have fallen* on a creditor who had not sold

the

the demand; but if a thing ſold, yet remaining with the ſeller, be deſtroyed by the act of God, the price muſt be refunded by the ſeller.

In this *aſſignment of bonds*, one form is a ſale made with a written contract previouſly executed; another is a ſale made in the debtor's preſence, or with his knowledge; another *again* is a ſale before witneſſes: theſe, and many other forms regulated by the cuſtom of the country, ſuch as a ſale authenticated by an unatteſted inſtrument in the handwriting of the party, or his own recovery of the debt and payment of it to the purchaſer, may be underſtood by a ſimple exertion of intellect. The form is alſo ſimilar in the caſe of hypothecating a written contract of debt: but with this difference, that if the debtor happen not to pay the ſum borrowed by him, the intermediate uſer *or debtor* muſt make good the debt out of his own funds to the ultimate creditor; and the promiſe of payment concerns the lender only, but is in the power of the ultimate creditor; conſequently the debt cannot be received by the lender, without the aſſent of the ultimate creditor.

Some perſon applying to a merchant who lives by money-lending, ſays, "deliver me cloth to the value of a thouſand *ſuvernas*, and let that value remain a debt due from me;" on thoſe terms, giving a writing, he takes the cloth: what does the value of it become, for no money has been paid? On this doubt it is ſaid, the price of the commodity which was ſold, is a debt mentally contracted; intereſt muſt therefore be paid on the price of the commodity.

Is not the ſenſe of the word *(rĭna)* debt, 'money or goods delivered, and producing gain *to the lender*, in conſideration of its remaining *for a time* with the debtor?' But, in this caſe, ſince the price of the cloth was not then paid, it could not be delivered, and the requiſites of a debt cannot therefore exiſt. *The objection is* not *well founded; by fiction* there may be a delivery of the price of the cloth, as there may be *a fictitious delivery* of gold or the like, *given* by way of gratuity, though it be not actually produced.

In the parallel caſe propoſed, there is, on the part of the votary, a preſent act of volition to annul his own property, and veſt property in another, which amounts to gift, and is not imaginary; but here, ſince there is no ſuch money as that in

conſideration

confideration of which property ſhall be veſted in the buyer, after the property of the ſeller has been deveſted, the buyer's property is null; and, the intended delivery being imaginary, is it not actually invalid? Admitting the objection, "deliver" is ſecondary in the definition of debt: and, in the caſe ſtated, the thing lent becomes the property of the buyer, *whether it be* the price or value of the cloth *which is lent*, *or* only the cloth ſold; as in the caſe of compound intereſt. This ſubject has been further treated by me (JAGANNÁT'HA) in the *Rinavádárt'ha*. In the caſe propoſed, there is a mixed tranſaction of loan and ſale.

Form of a Writing for a Debt ſold.

After writing on the aſſignment the name of the lender, and ſo forth, it is uſual to write, "this ſale of a written contract of debt:" and that is proper; for, by ſelling the written leaf with the letters inſcribed on it, the ſale of the thing written is alſo valid, as the approach of horns is *denoted* when *it is ſaid* a horned animal approaches. Thus, ſince letters muſt extend to the words, the ſale of the words, *conſtituting a promiſe*, is certainly valid. Or it may be written, "this bill of ſale of a debt;" by this the ſale of an unwritten debt may alſo be effected: and it is equally proper in the preſent caſe.

On the reaſoning above ſtated, although the thing promiſed might not be ſold, the promiſe may be ſold, and here the meaning of debt is, money received after ſuch previous promiſe. The debt belongs to the purchaſer alone; hence, if it happen to remain unpaid, the ſin conſiſts in not paying the debt due to the purchaſer, not in withholding a debt due to the ſeller. But ſuch intereſt only as had been promiſed ſhould be paid; not intereſt at the rate of an eightieth part, and ſo forth, when ſtipulated intereſt had been previouſly promiſed, and no expreſs declaration was made concerning intereſt at the time of the ſale. If a debt be ſold by a *Bráhmana* creditor to a *Súdra*, intereſt muſt be received at two in the hundred, the regular rate in the order of claſſes; not at five in the hundred: for intereſt is ſettled by the agreement made when the debt is contracted. Nor ſhould the purchaſer then exact a promiſe of greater intereſt, for that loan had been already advanced by another perſon. But, after the

lapſe

lapſe of the period ſtipulated, ſhould the debtor be unable to diſcharge the debt, the purchaſer, who is become the creditor, may, according to ſome opinions, exact a promiſe for ſtipulated intereſt, or for the *cáyicá* of NÁREDA, as explained by CHANDÉSWARA, at the rate of a *pana*, or half or other fraction of a *pana*; for that is the proper time for a ſtipulation of ſuch intereſt, and the debtor is then in the power of him who purchaſed the debt.

Although there be no expreſs text of Sages on the preſent ſubject, this and other rules for contracts valid by uſage are deduced from the authority of reaſon copying ſacred law for the ſake of legal deciſion in caſes of doubt. A portion of the ſubject has been inſerted by way of illuſtration; other points may be ſimilarly reaſoned by the wiſe.

Form of a Writing for a Debt pledged.

After writing the name of the lender, and ſo forth, and ſubjoining "this contract of debt on the pledge of a debt;" it ſhould be added, "a debt of ſo much is contracted by me, giving unto thee, as a pledge, a debt amounting to ſuch a ſum contracted by ſuch a one, on an agreement for ſo much intereſt, in ſuch a year, month and day, and in the preſence of ſuch and ſuch perſons," and ſo forth: it ſhould be *further* written, "if this debt be not diſcharged by me on ſuch a day of ſuch a year, then the debt due to me by ſuch a perſon ſhall be thine," and ſo forth, according to circumſtances. This and other forms, as ſuggeſted by common ſenſe, are ſtated by way of example, to guard againſt defective writings.

In this caſe the firſt debt ſhould not be recovered *from the debtor*, until the cloſe of the period for which the ſecond loan is made. But, if *no more than* half or other portion of the original debt were made over as a pledge, then a proportionate part may be recovered from the debtor; and it ſhould be inſerted in the inſtrument. However, it is not proper to fix a period for the ſecond loan extending beyond that of the firſt loan. This and other points may be inferred from reaſoning.

Form

Form of a Writing for a Price lent, or Credit given in consideration of Interest.

It ſhould be a document of the debt, not a document of ſale only, becauſe the ſale is ſhown by the declaration of the debt; for the declaration in words runs thus, "I borrow the value of this commodity, ſo and ſo, which is bought of you." It ſhould not be affirmed, that *it might be drawn* converſely; and thus the inſtrument would be only a bill of ſale. Were it ſo, the debt would not be *the* chief *object of the writing*, and the clauſe fixing the period *of repayment*, and ſo forth, could not be well arranged. But, ſhould it be thought neceſſary to authenticate the purchaſe, a ſeparate document would be proper. To expatiate *in this place* would be vain. Sales and the like may be ſimilarly authenticated by bills of ſale: *but* that ſhould be hereafter diſcuſſed under the head of Sales, and ſo forth.

IX. *On Uſage in general.*

Doubts occurring on many ſubjects have been ſolved by reference to practice; a deciſion being therefore valid when founded on the practice obſerved to exiſt, is not law uſeleſs? Practice, which is founded on law, prevails; hence uſage, inconſiſtent therewith, muſt be abrogated: but where no expreſs law is found, one ſhould be eſtabliſhed on approved uſage.

L.

MENU:—What has been practiſed by good men and by virtuous *Bráhmanas*, if it be not inconſiſtent with the legal cuſtoms of provinces or diſtricts, of claſſes and families, let him *(the king)* eſtabliſh.

What is not inconſiſtent with the uſages of provinces, claſſes, and families, and has been practiſed by virtuous and learned *Bráhmanas*,

Brâhmanas, though it be law not found *in codes*, let him establish.

CULLÚCABHATTA.

By the expression, "law not found in codes," it is intimated that law should be established on approved usage, else it would have been said, "if there be no *express* law." But the practice *of forbearance*, which has been introduced by good men, through tenderness, in consideration of the debtor's inability to pay, and so forth, should not be abolished. The use of law is only to prevent the introduction of multiform practices at the will of men of the present generation. Where many texts of law are inconsistent, or many interpretations of the same text are contradictory, usage alone can be received as a rule *of conduct:* and practice, which differs in some respects from positive ordinances, but is not remote from ancient legislation, can only be confirmed by its *general* connexion with law. Consequently that practice which is conformable to law is best, but that which is inconsistent therewith must be abolished; yet, if that may not be, practice inconsistent with law must be nevertheless retained. But where no *positive* ordinance is found, there is nothing inconsistent with any known law, and in that case approved usage alone must regulate *proceedings*. Hence it is said, "human tradition is not unfounded." Still, however, the example of learned and virtuous *Brâhmaṇas* should be followed for the sake of prosperity, not the practice of immoral and foolish *Súdras* and the rest. This and other points may be viewed by a man's own judgement, and it must be so understood in all matters, not in cases of debt alone. Thus have been discussed the various sorts of Interest.

Sect. III.—*On Interest specially authorized, and specially prohibited.*

Art. I.—*On Debts bearing Intereſt, without an expreſs Agreement.*

LI.

Cátyáyana:—Though a loan be made *expreſsly* without intereſt, yet, if the debtor pay not the ſum lent after demand, but *fraudulently* go to another country, that ſum ſhall carry intereſt after a lapſe of three months.

Uddhāra (the term employed in the text) here ſignifies money received without a promiſe of intereſt. " If he go to another country," if he abandon the country in which the creditor reſides, that debtor ſhould *immediately* pay the ſum lent.

The *Retnácara*.

If he abandon the country in which the creditor reſides; that is, if he go to another country.

" After a lapſe of three months;" if it have been demanded, *it ſhall bear intereſt* at the end of three months.—The *Chintámeni*.

That is, if the ſum lent be demanded, but not paid, *it bears intereſt* after a lapſe of three months from the date of the loan. In this caſe, a loan has been amicably made by the creditor without any ſtipulation for intereſt. It is proper that no intereſt ſhould be paid by the debtor, while friendly intercourſe is maintained: but if he do not pay it after demand, the friendly conſideration no longer ſubſiſts, and intereſt ſhould therefore be paid. In that caſe it commences at the expiration of three months under the authority of the law. However, ſhould he fix a near term after the firſt demand, with the aſſent of the creditor, and pay it at that term, no intereſt accrues: accordingly it is ſaid in a text, which will be cited, " after more demands than one."

But

But no intereſt accrues within three months, even though the debt be repeatedly demanded; for no law *has authorized it.*

If it be aſked what ſort of intereſt? *the anſwer is,* intereſt at the rate of an eightieth part, and ſo forth, as preſcribed by law. But CULLÚCABHATTA expounds the text of MENU (XLII) as relating to this caſe: "Intereſt exceeding the fixed rates, or thoſe preſcribed by law, and contrary to, that is different from, intereſt agreed on, or, in other words, intereſt not agreed on, is invalid, and cannot be *exacted:* intereſt not agreed on cannot be *exacted* at rates not declared by the law; for there can be no intereſt which is neither ſettled by the parties, nor preſcribed by law." Conſequently, in a caſe where none was agreed on, intereſt ſhould be received at the rates preſcribed by law, in the order of the claſſes. So *the following text:*

LII.

VISHNU:—After the lapſe of one year, debtors, *who have not acted fraudulently,* muſt pay intereſt, as allowed, even though not agreed on *at the time of the loan.*

"As allowed;" at the rate of two and three in the hundred, and ſo forth, in the order of the claſſes. He declares another diſtinction in reſpect of intereſt without a ſpecial agreement.

LIII.

VISHNU:—*Sages have declared it* an uſurious mode; yet a lender may exact five in the hundred.

"From twice-born men," muſt be ſupplied in the text: hence it is an uſurious mode, originating with abject perſons. MENU and the reſt have declared it *ſo:* this muſt be ſupplied in the text. Conſequently a lender may exact, even from a twice-born man, the intereſt which is receivable from a man of the ſervile claſs, or five in the hundred; but ſuch conduct is im-

 moral:

moral: and this muſt be underſtood of a ſum lent without any agreement for intereſt, and which has been demanded.

LIV.

CÁTYÁYANA declares it:—What has been amicably lent for uſe, ſhall bear no intereſt until it be demanded back; but if, on demand, it be not reſtored, it ſhall bear intereſt *on its true value* at the rate of five in the hundred.

The rate of five in the hundred, which is mentioned *in theſe texts*, ſuppoſes a debtor of a twice-born claſs; for, if it concerned a debtor of the ſervile claſs, it would not exhibit an uſurious tranſaction, but would be a vain repetition of the rate of five in the hundred. Hence it is CULLÚCABHATTA's interpretation, that, becauſe a lender may exact five in the hundred from a debtor of a twice-born claſs, therefore do Sages term it an uſurious way.

It is, *however*, proper to conſider the phraſe, "the lender is entitled to five in the hundred," as a mere repetition of the rate of intereſt receivable from a debtor of the ſervile claſs; for it is difficult to eſtabliſh another rule of intereſt: and the ſenſe is, Sages have propounded this rate of intereſt as the way of money-lending; therefore is a lender entitled to it. This may be argued on the authority of VÁCHESPATI MISRA; for he ſays as much in his gloſs on a *ſubſequent* text (LVI 2): and it is proper to eſtabliſh the ſame induction in the preſent inſtance; for there is no difference; and this intereſt ſhould be underſtood in all caſes where no agreement for intereſt was expreſsly made.

If a debtor, having received a loan free of intereſt, go to another country after the debt has been demanded, intereſt is ordained after the lapſe of three months; the Sage alſo propounds intereſt in the caſe of a debtor who remains in the ſame country.

LV.

CÁTYÁYANA:—A debtor, who, even reſiding in his

 own

own country, pays not *the debt* after more demands than one, ſhall be forced, however unwilling, to pay intereſt on it, though not ſtipulated, *after the lapſe of one year.*

Meaning the very ſame caſe, VISHNU ſays in the text above cited (LII), " after the lapſe of one year."

According to MISRA, the phraſe " *if he* go to another country" (LI) is indeterminate; for, citing the laſt text (LV), he ſays, all this ſuppoſes payment fraudulently withheld; but, in a caſe void of deceit, the rule of VISHNU (LII) *is applicable.* Yet, in fact, a journey to another country is equivalent to fraud; but he who reſides in his own country is not *ſuppoſed* to practiſe fraud, but only procraſtination. Both texts therefore coincide. Thus, the two different periods for the receipt of intereſt are regulated by the practice or omiſſion of fraud, inſtanced in the *debtor's* journey to a foreign country, and *his* reſidence in his own country. It is then only conſidered as a journey to another country, when the debt cannot be demanded at the place where the debtor reſides; not when he merely quits the village, and ſo forth. Even though both parties reſide in the ſame town, yet if the debtor abſcond whenever he ſees the creditor, it is *the ſame with* a journey to another country. Or, if both reſide in a foreign country, it is a reſidence in the ſame country. Hence both texts coincide in *conſidering* the fraudulent intent *of the debtor:* and if a debtor, from whom payment is demanded, go to another country after appointing a time *of payment*, and returning pay the ſum at the time appointed, there is no fraud.

" Pays not " (LV); ' the *debt*, *or* principal ſum,' ſhould be ſupplied in the text. " After more demands than one;" after repeated demands. The reading approved by CHANDÉSWARA is *ávahét* inſtead of *áharét; ſtill* the meaning is, " muſt pay to the creditor." Conſequently, the aſcertained ſenſe of the text is this: in the caſe of a loan made through friendſhip, if it be not paid after demand, and any fraud be practiſed, intereſt, though not *previouſly* agreed on, accrues after the lapſe of three months; but if no fraud be practiſed, after the lapſe of one year.

LVI.

ÇÁTYÁYANA:—Should a man, having bought a marketable commodity, *fraudulently* go to another country, without paying the price of it, that price ſhall bear intereſt after three ſeaſons, *or ſix months.*

2. *Even without a journey to a foreign country,* a depoſit, the balance of intereſt, a commodity ſold, and the price of a commodity purchaſed, not being paid *or delivered* after demand, ſhall bear intereſt at the rate of five in the hundred, *if the debtor be a* 'Súdra*.

The third meaſure of the ſecond verſe is read in the *Chintámeni*, *Yáchyamánónachéddadyát*, inſtead of *Yáchyamánamadattanchét: (it makes no change in the ſenſe.)*

Should a man, having taken a marketable commodity or vendible thing, ſuch as cloth or the like, go to another country, that is abſcond, without paying the price of it, *that price ſhall bear intereſt* after three ſeaſons, or ſix months. What intereſt? The Sage ſubjoins it, " A depoſit &c. ſhall bear intereſt at the rate of five in the hundred" (LVI 2). The prohibition of intereſt on a depoſit, and on the price of a commodity, will be explained as *reſtricted* to a depoſit and price not demanded. " Balance of intereſt;" the compound term is in the form of appoſition called *tatpuruſha*. Such is MISRA's opinion.

The terms may be joined in the form called *Carmadháraya;* " intereſt and the balance of it;" for this appoſition is preferable. If it be aſked, balance of what? the anſwer is ſuggeſted by the neareſt term, balance of intereſt. Such is CHANDÉSWARA's interpretation. But it may be queſtioned, why the terms ſhould not be explained, in the appoſition named *Carmadháraya*, " remaining intereſt."

Here it ſhould be remarked, that, according to many commentators,

* The laſt verſe is again cited in Book II. Chap. i. V. 32.

mentators, the period when the principal is doubled, excepting this cafe of periodical intereft, is the time when the debt fhould be paid *by the debtor*, and intereft be received *by the creditor*. If a debtor do not pay it, although it be then demanded, but put off payment, faying, "it fhall be paid to-morrow, or it fhall be paid the day after to-morrow," in that cafe, legal intereft accrues after fix months: "balance" is here a general inftance. According to others, if an honeft debtor, being then unable to difcharge the debt, ftipulate intereft and renew the contract, intereft commences from that date, and is wheel-intereft: fince intereft is here ftipulated, the rate of two in the hundred, and fo forth, is not applicable to this cafe.

Or it may be thus explained: If a balance of intereft only be due, there is no wheel-intereft: for this reafon the word "balance" is here employed. But, if the whole intereft be due, intereft alfo accrues after the lapfe of fix months, under the rule exemplified by the cafe of the ftaff and bread*. But, if the intereft have been paid, and the principal only be due, it bears no intereft, however long it remain unpaid (XLIII). In this cafe it muft have been particularly fpecified by the parties, "that, *which remains due*, is the principal; this, *which is paid*, is the intereft." In the cafe of periodical intereft, alfo, if it be not *regularly* paid month by month, this text (LVI) is applicable.

"A commodity fold, and the price of a commodity purchafed (crayam vicrayam †):" that which is purchafed *(críyaté)* is *(craya)* the commodity; that for which a vendible commodity, as a cow or the like, is fold *(vicríyaté)*, is *(vicraya)* the price. Here alfo three feafons are underftood. Therefore, on a bailment, on the balance of intereft, on a vendible commodity, and on the price of a commodity, if they be demanded and not delivered, intereft muft be paid after fix months, at the rate of five in the hundred, by a defaulter of the fervile clafs; for it coincides with the rate *prefcribed for that clafs* (XXIX 2). MISRA.

Some hold, that, if three feafons muft be alfo underftood in this text, the preceding text would be fuperfluous; it is therefore proper

* The rule may be thus expreffed: "the greater includes the lefs." The example alluded to is this: one bids another throw away the bread touched with the ftaff; of courfe the ftaff was no lefs to be fhunned than the bread it had foiled.

† In the ufual acceptation, the fenfe would be 'purchafe and fale.'

proper not to connect the terms with the three ſeaſons there mentioned. How then is the period determined when intereſt ſhall commence on the balance of intereſt, and ſo forth? Being mentioned in the ſame text with *the* price *of a commodity*, *intereſt commences* on theſe, as on the price of a commodity, after three ſeaſons.

That ſhould be queſtioned; for, ſince the phraſe muſt be ſeparately referred to "depoſit" and the reſt, there is no difficulty in this conſtruction of the text, "on the price of a commodity *(vicraya)* intereſt accrues after three ſeaſons." Why has not the Sage inſerted in this text, "after three ſeaſons," and, "go to another country," and omitted thoſe terms in the preceding text? *The objection is* not admiſſible, for with Sages there can be no expoſtulation.

By ſaying, "muſt be paid by a defaulter of the ſervile claſs," it is eſtabliſhed, that, in the caſe of amicable loans, intereſt at the rate of five in the hundred ſhall only be paid by a *Súdra;* for intereſt on *ſuch* a loan, and on depoſits and the reſt, can only be payable *by him*, after the lapſe of three months, and ſix months reſpectively. Therefore a man, who, after receiving the price of the cow, does not deliver that cow when demanded, though ſold by him, and a purchaſer who does not pay on demand the juſt price of a commodity purchaſed, muſt pay intereſt at the rate of five in the hundred *and ſo forth*, in *the inverſe* order *of claſſes*.

The *Retnácara.*

For a ſeries may be either direct or inverſe.

Does the cow, or the price of the cow, bear intereſt at the rate of five in the hundred? It is the ſame thing; for, ſince a cow cannot be divided, it is only her value that is divided, as has been already mentioned. If a man, having bought a cow, go to another country without paying the price, muſt the cow or the price be delivered with intereſt after three months? It is ſaid, the price only muſt be paid with intereſt; for, after the purchaſe, the cow became the property of the purchaſer. Accordingly, on religious occaſions, people diſmiſs bulls and the like, which they have purchaſed for a price promiſed *but not yet delivered*. Purchaſe is only forfeited by neglect during a ſpecific time. To expatiate would be vain. But he who, having ſold a cow and received the price, does not deliver the cow ſold, muſt give her with intereſt after ſix months.

In the preceding text a demand muſt be abſolutely underſtood: if the thing be demanded but not delivered, it bears intereſt; not, if no demand be made. Again; under the expreſſion "go to another country" (LVI 1), intereſt after three ſeaſons is ruled, if fraud be practiſed, by the ſame reaſoning with that above ſtated.

LVII.

CÁTYÁYANA:—But he who, having received a chattel lent for uſe, goes to a foreign country without reſtoring it, muſt pay intereſt, according to the value of it, after three ſeaſons, *or ſix months.*

"A chattel lent for uſe" *(yáchitaca)*; a thing intruſted to him. The *Retnácara.*

Meaning ornaments or the like for decoration, which a man, aſking *(yáchitwá)* from any perſon, has obtained. In regard to this, the ſame practice prevails with that reſpecting *other* bailments.

But MISRA ſays, the *following* texts of NÁREDA concern chattels intruſted for uſe.

LVIII.

NÁREDA:—There ſhall be no intereſt, without a ſpecial agreement, on valuable things lent through friendſhip *for uſe, not for conſumption;* but, even without agreement, property ſo lent bears intereſt after half a year;

2. This is declared to be the legal rate of intereſt on amicable loans. But the *rate of* intereſt, which has been mentioned, is conſidered as uſury on grain.

He thus expounds the texts: the word "give" here ſignifies intruſt or lend *for uſe;* there is not conſequently any contradiction to the text above cited (LI).

Such

Such being the cafe, it is made evident, that a loan for ufe, which is fimilar to a depofit, bears intereft after fix months, if it be not reftored *on demand.* But the text of NÁREDA is cited by ÇHANDÉSWARA, after difcuffing loans for ufe, with the text of VISHNU (LII) interpofed. This opinion is thereby intimated: a loan advanced *free of intereft*, in confequence of fome apprehenfion from human caufes, bears intereft in three months after it has been demanded; but a loan, which is advanced through friendfhip, bears intereft in fix months after it has been demanded. The text of CÁTYÁYANA (LIV) is cited in the *Vivâda Chintâmeni*, and by CULLÚCABHATTA, for this import; and *this* text muft be fimilarly expounded. This obfervation of fome lawyers is not *well founded:* for CHANDÉSWARA has thus arranged *the compilation:* inferting all the texts of CÁTYÁYANA, he quotes texts of other Sages; elfe, if the text of CÁTYAYANA, (LIV) had the fame import with that of NÁREDA, it would be wrong to interpofe *another*. Therefore MISRA's interpretation fhould be deemed right in this inftance.

The term "without agreement," which occurs in both hemiftichs, fignifies "not in any manner expreffed in words," *that is*, not ftipulated: hence, if intereft have been expreffed by the borrower, the creditor may exact fome *intereft*. "Without agreement" *may be explained* without a declaration of its bearing intereft, without any ftipulation of intereft; for the particle Á is explained by AMERA, affent or promife. Or the term might fignify "intereft not fettled with the confent of the borrower," and, as here ufed, "that which has not been fettled tc bear intereft with the confent of the borrower."

"Ufury on grain" (LVIII 2); on grain lent without any agreement for intereft, but not repaid on demand. The rate of intereft, which has been declared by Sages, fuch as twice the principal, and fo forth, is deemed ufury. On a loan advanced, with a declaration that intereft fhall on no account be received thereon, fhould the creditor afterwards require intereft, from the circumftances of the times, or in confequence of a breach of promife, no fuch intereft is allowed: though not declared by the text of any Sage, this may be deduced from reafoning by wife *inveftigators*.

According to MISRA, intereft accruing in all thefe cafes, after the

the lapſe either of three or of ſix months, muſt be underſtood of payment fraudulently withheld; but, if no fraud be practiſed, intereſt commences after the lapſe of a year, under the rule of VISHNU above cited (LIV). In fact, a journey to another country indicates fraud; and another country is that, during the debtor's reſidence, in which the creditor cannot demand payment of the debt: herein MISRA and CHANDÉSWARA concur. But, according to CHANDÉSWARA, a debtor offends not by going to another country on urgent buſineſs, as has been already noticed. In the caſe of a commodity purchaſed and the reſt, intereſt alſo commences after the lapſe of a year, if the debtor have not gone to another country: this is deduced from the expreſſion in the *Vivâda Chintâmeni*, "in all theſe caſes;" and is not diſallowed by CHANDÉSWARA, CULLÚCABHATTA, and the reſt.

On a loan made without intereſt, and of which payment is withheld after demand, intereſt accrues at the end of three months: on other things fraudulently withheld after demand, ſuch as a depoſit, a bailment for uſe, or the like, intereſt accrues at the end of ſix months; but not reſtored through inability, and ſubmiſſively refuſed, they bear intereſt after the lapſe of a year. Such is the opinion of CHANDÉSWARA, CULLÚCABHATTA, MISRA, and others. If payment be withheld by one taking the protection of ſome perſon who may awe the creditor, how ſoon intereſt commences in ſuch a caſe, is not expreſsly ſaid by any author.

According to the *Mitácſhará*, intereſt is in ſome caſes due without a ſpecial agreement, as is declared generally by NÁREDA (LVIII); but remarking, that "intereſt without a ſpecial agreement is *in certain caſes* prohibited," *the author of the Mitácſhará* ſubjoins, as a particular rule, the text *ſubſequently cited* (LXXI). Conſequently, from the ſeveral applications of the general and particular rules, intereſt without a ſpecial agreement accruing at a certain period on loans advanced free of intereſt, appears obviouſly ſuggeſted; but no intereſt, without a ſpecial agreement on the price of a commodity, and the reſt. That, however, is not ſatisfactory; for intereſt without a ſpecial agreement is allowed on things amicably lent; and fines and the reſt would be vainly included in the ſecond text (LXXI). This text, therefore, is not oppoſed to the preceding text (LVIII); but it

reſtrains

reſtrains a purchaſer, who covetouſly demands intereſt at the ſame rate with loans, becauſe a commodity purchaſed by him has long remained with the ſeller. Accordingly the text of CÁTYAYANA (LVI 2) has a ſimilar import; and the ſame rule ſhould be underſtood in regard to the price of a commodity purchaſed.

In this gloſs, the third meaſure of the text of CÁTYÁYANA (LVII) is read "after the lapſe of a year," inſtead of, "after three ſeaſons." Conſequently, ſhould a man, who has received a loan exempt from intereſt, go to another country before it be demanded, *he ſhall pay* intereſt after the lapſe of one year (LVII); but if he go to another country without reſtoring it after it has been demanded, *he ſhall pay* intereſt after a lapſe of three months (LI). The word "*yáchitaca*" muſt ſignify a loan in general, inſtead of a chattel lent for uſe, for this text (LVII) is inſerted after ſtating the text *firſt cited* (LI). If one, who remains in his own country, do not pay the debt after a demand, it bears intereſt from the date of the demand; for the text of CÁTYÁYANA (LV) does not ſpecify a period.

According to this gloſs, what is the purport of the text of NÁREDA (LVIII)? The anſwer is, two caſes have been declared according as the debt has, or has not, been demanded from one who goes to another country; in regard to him who reſides in his own country, one caſe has been declared, *that is, the caſe* where the debt has been demanded; it is proper to refer the text of NÁREDA to the caſe of one who reſides in his own country, but from whom the debt has not been demanded. Were it ſo, what would be the rule where a demand was made after a lapſe of ſeven months? In reply it is aſked, why does the creditor neglect intereſt, to which he is entitled under the authority of the text, after the lapſe of ſix months? if through tenderneſs he exact not intereſt, the debtor need not pay it.

On this expoſition, the text of VISHNU (LII) concerns one who has received a loan for uſe, and goes to a foreign country before it has been demanded; and the text of CÁTYÁYANA (LVI) ordains intereſt, after ſix months, on depoſits and the like *not reſtored* after demand. According to this interpretation, if ornaments or the like be aſked and obtained for a nuptial feſtivity or the like, they are ſimilar to a depoſit, and are not loans, for they are ſtated by YÁJNYAWALCYA with depoſits (Book II.

Chap.

Chap. i. V. 10). But if an agreement were made at the time of receiving a loan exempt from intereſt, or the like, in this form, " it ſhall be reſtored by me at the end of one year;" in this and ſimilar caſes, if the thing be not reſtored after the period has elapſed, it then bears intereſt, and not after ſix months. This and ſimilar rules may be deduced by the wiſe from arguments conſiſtent with common ſenſe. But the author of the *Mitácſhará* is revered by CHANDÉSWARA and the reſt, and is more ancient than they. Of the two opinions which ſhould be rejected, which adopted in practice, muſt be determined from the difference of times and of places.

ART. II.—*On the Limits of Intereſt.*

LIX.

GÓTAMA:—The principal can *only* be doubled by length of time, *after which intereſt ceaſes.*

That which is lent *(prayujyatē)*, is *(prayōga)* the principal. The money lent can be doubled, that is, can only be doubled; elſe it would be uſeleſs to declare, that twice *the principal* may be received on account of the length of time *elapſed*. By the word " only" it is forbidden to receive more than twice the principal. Accordingly CHANDÉSWARA ſays, the word " or" in a text already quoted from VRĬHASPATI (III) is indefinite, and alſo ſuggeſts a debt doubled, or the like. " By length of time;" counting from a period ſomewhat leſs than ſufficient to double the principal, intereſt ceaſes if the debt remain longer due. This is meant in a text cited from VRĬHASPATI (XXVI). Elſe the mention of double the principal in a text of law propounding right and wrong would be uſeleſs. The text cited from HÁRÍTA (XXX) makes this evident; for the verb there uſed *(ſanſthá)* ſignifies *ſtops or* " bears intereſt no longer:" and this intereſt, ſufficient to double the principal, is the higheſt intereſt receivable

receivable on gems, *gold*, and the like, not on grain or the like, for *ſuch limitation of intereſt on grain and the reſt* is oppoſed by a ſpecial text, which will be cited.

CHANDÉSWARA remarks, "this concerns a loan of valuable things in general:" by the term "in general" it is declared that this text is a general law; it follows, that ſpecial rules are thereby oppoſed. Accordingly MISRA declares the full meaning; "this concerns gems, *gold*, and the like, as ordained by CÁTYÁYANA."

LX.

CÁTYÁYANA:—For gems, pearls, and coral, for gold and ſilver, for cloth made of *cotton, the* produce of fruit, *or made* of *ſilk*, the produce of inſects, or *made* of *wool*, the produce of ſheep, the intereſt ſtops when it doubles the debt.

"Stops when it doubles the debt;" accumulates no further. "Coral," expreſſed in the plural, implies "and the reſt," by which ſhells are included *in the text;* for HÁRÍTA declares, that intereſt ceaſes when it has doubled the principal at the rate of eight *panas* in twenty-five *puránas*. (*Puràna* is a name for *a certain number of* ſhells.) This induction is conſiſtent with practice; and it is proper that double the principal be the limited accumulation on ſhells, ſince no ſpecial rule has been declared. It is the ſame in reſpect of conchs and the like.

"Of the produce of fruit;" as cotton and the like. "Of the produce of inſects;" as ſilk and the like. "Of the produce of ſheep;" as blankets and the like. The *Retnácara.*

LXI.

MENU, ſtating generally, that "intereſt on money received at once, *not month by month, or day by day, as it ought*, muſt never be more than enough to double the debt, *that is, more than the amount of*

of the principal paid at the ſame time," adds a ſpecial rule:—On grain, on fruit, on wool or hair, on beaſts of burden, *lent to be paid in the ſame kind of equal value,* it muſt not be more than enough to make the debt quintuple*.

"Grain;" as rice, barley, or the like. "Fruit" *(ſada)* or any thing produced from trees. Here "tree" is merely illuſtrative, for "the produce *(ſada)* of a field" occurs in a text which will be cited from GÓTAMA (LXII). "Wool or hair," what is afforded by ſheep, *cows,* and the like, as wool, cow-tails, and the like, *as appears* from the derivation *of the word (lava) what* is ſhorn *(lúyatē).* The *Retnácara.*

What is ſhorn *(lúyatē)* is wool or hair *(lava),* ſuch as wool and other hair on the body *(lōman).* CULLÚCABHATTA.

"Hair" *(lava);* any thing to be ſhorn *(lavanīyam),* except wool; that is, hair on the body *(lōman)* and the like.

The *Vivāda Chintāmeni.*

"Wool or hair" *(lava);* cow-tails and the like.

The *Dípacalicá.*

"Wool or hair" *(lava);* the fleece of ſheep, the pod of muſk-deer, and the like. The *Mitácſhará.*

All therefore agree, that the word "*lava*" is ſynonimous with *lōman,* being derived from the ſame crude verb *(lu,* cut or ſhear). But MISRA thinks, hair other than that of ſheep is meant in the text of MENU, becauſe it is oppoſed by the text of CÁTYÁYANA (LX). But, according to the *Retnácara* and the reſt, this text (LX) concerns cloth alone; it is almoſt expreſsly ſaid ſo by CHANDÉSWARA.

"Beaſts of burden;" employed for tranſport, as horſes and the like. On theſe, the intereſt of the loan muſt not exceed the quintuple; with the principal it muſt not amount to more than quintuple; it can produce no more. *That* the quintuple includes the principal *is thus inferred;* as it is declared, that a debt is doubled in fifty months, and *accumulation* then ſtops; that is, intereſt ceaſes; and conſequently the principal is one part, and the intereſt another part, which united make the double ſum; ſo, in

* The firſt hemiſtich has been already quoted (XLIII).

in this cafe alfo, by parity of reafoning, the principal is one part, and the intereft four parts, which united make the whole quintuple fum. Accordingly, any fuch debtor, who has borrowed grain or horfes valued at a hundred *pieces of money, for intereft* at the rate of two in the hundred, however long the period of *debt may be*, can only be liable to pay grain and the like amounting *in value* to five hundred *pieces of money*, and no more. —The *Retnácara.*

Here the rate of two in the hundred is a mere example: on a loan fecured by a pledge alfo, where the rate of intereft is an eightieth part of the principal *by the month*, the intereft can only double the principal, which confifted of gems, *gold*, or the like: and, by parity of reafoning, it can only make the debt quintuple, if it confifted of grain or the like; for no other limit of intereft is found in the *codes of* law. VRĬHASPATI (XXVI), declaring that the principal is doubled even in the cafe of a loan fecured by a pledge, ftates that alone as the limit of intereft; and it concerns gems, *gold*, and the like, for it has the fame import with the text of CÁTYÁYANA (LX).

On this it fhould be remarked, fay fome lawyers, that the rule regards priefts only; but, if the debtor be of the military or other clafs, intereft muft make the debt treble, quadruple, or quintuple, in the order of the claffes: elfe it would be a great difparity, that intereft payable by a *Súdra* fhould ceafe after twenty months; and, payable by a *Bráhmana*, after fifty months. That is wrong; for no Sage has mentioned intereft on gems, gold, or the like, more than fufficient to double the principal. As intereft on a loan fecured by a pledge ftops at the end of fix years and eight months, but, if there be neither pledge nor furety, at the clofe of fifty months; fo, if the debtor be of the facerdotal clafs, intereft ftops at the end of fifty months, but, if he be of the fervile clafs, at the end of twenty months: there is no *unjuft* difparity.

Intereft on grain or the like makes the debt quintuple in fo much time as is fufficient for intereft to become equal to four times the debt, whether at the rate of an eightieth part and fo forth, if a pledge or the like have been given, or at the rate of two in the hundred and fo forth, if there be neither pledge nor furety; not in fo much time as would make *other* debts double: elfe, fince the law ordains monthly intereft at the rate of an eightieth part and fo forth, fomething lefs than twice the principal would

be received on grain or the like, if the period elapſed were one day ſhort of eight months above ſix years, but five times the principal would be received on grain and the like if the eighth month were completed; which would be a great diſparity. Since fifty months and various other periods are not ruled *univerſally*, it is proper to affirm, that intereſt ceaſes at thoſe periods reſpectively, when it has riſen to ſo many times the principal.

LXII.

GÓTAMA:—Intereſt on milk or curds, on *the* hair *of goats and the like*, on the produce of a field, and on beaſts of burden, ſhall riſe no higher than to make the debt quintuple.

What is produced from cattle *(paśórupajáyaté)* is *(paſúpaja)* the produce of cattle, ſuch as milk and the like, excepting *however* clarified butter. The *Chintámeni*.

In the *Retnácara* a gloſs is found, "milk, clarified butter, and the like." It is liable to objection; for intereſt making the debt octuple will be declared for clarified butter.

"Hair" *(lóman)*; wool; for AMERA explains wool, the hair of ſheep and the like.

"The produce of a field;" fruit produced from a field, as barley, wheat, plantains, mangos and the like.—The *Retnácara*.

It is alſo proper to include grain *in general* under this *term*. Intereſt on grain, making the debt quintuple, is declared by MENU and GÓTAMA; *but* by VRĬHASPATI it is declared to make the debt quadruple.

LXIII.

VRĬHASPATI:—On the precious metals *or gems* the intereſt may make the debt double; on clothes and inferior metals, treble; on grain, quadruple; ſo on fruit, beaſts of burden, and wool or hair.

"Precious metals;" gold and ſilver. The *Retnácara*.

 It

It is a general expreſſion comprehending gems and the like; for the rule coincides with that of CÁTYÁYANA (LX).

The term "inferior metals" ſignifies *all* other minerals except gold or ſilver, namely copper and the reſt.—The *Retnácara.*

Excluſive alſo of gems and the like; for otherwiſe it would contradict CÁTYÁYANA. It is ordained by this *text* (LXIII), that intereſt on grain, fruit, hair or wool, and beaſts of burden, may make the debt quadruple.

LXIV.

VISHNU, cited in the *Retnácara*:—On precious metals, *or gems,* the higheſt intereſt ſhall make the debt double; on cloth, treble; on grain, quadruple; *on fluids, octuple*: on female ſlaves or cattle, the offspring ſhall be taken as intereſt.

On female ſlaves and the like, and on cattle, ſuch as cows, female buffaloes and the like, which the owner, unable to maintain them, has lent to ſome perſon that they may be ſupported and bear offspring, allowing *as the conſideration of their ſupport* the milk *of the female quadrupeds*, or the ſervice *of the female ſlaves*, and which have remained long with him, the offspring ſhall be the only intereſt; that is, no other intereſt ſhall be taken.

CHANDÉSWARA.

The text ſhould be read, "on grain treble, on cloth quadruple;" by which the remark of CHANDÉSWARA is juſtified: "VISHNU, VAŚISHT'HA, and HÁRÍTA, declare that intereſt on grain may make the debt treble."

Before the phraſe, "on female ſlaves and cattle, the offspring ſhall be the intereſt," "on fluids octuple" has been omitted by the error of the tranſcriber; for it is found in the *Vivāda Chintámeni*, and the ſame is propounded by YÁJNYAWALCYA. "Fluids" intend ſalt *(though cryſtallized)*, and oil and ſimilar commodities.

LXV.

YÁJNYAWALCYA:—The offspring of female ſlaves or cattle *ſhall be taken as intereſt*; on ſome fluids

the higheſt *accumulation through* intereſt may be eight times as much *as the principal;* on clothes, grain, precious metals or gems, it may be *in order* four times, three times, or twice as much *as the articles lent.*

The offspring of female ſlaves or cattle, taken as *(vriddhi)* intereſt, or increaſe in its accepted ſenſe, is not the higheſt *legal* intereſt *(paramavriddhi)*, for the term is explained by authors according to its derivative ſenſe *(varddhana)* increaſe in general (from the crude verb *vridh*, grow): the offspring of cattle and of female ſlaves is the only intereſt; it is poſſible that cattle and female ſlaves ſhould be lent by one who is unable to maintain them, and who wiſhes they ſhould be ſupported and bear offspring.

The *Mitácſhára.*

SÚLAPÁNI, in *his* commentary on YÁJNYAWALCYA, ſays; ſince there can be no other intereſt on female goats and the reſt, and on female ſlaves and the like, placed as pledges, their offspring is the only intereſt. The higheſt intereſt on oil and the like lent at intereſt, being added to the principal, makes the debt octuple, and accumulates no further.

Thus, according to ſome opinions, cattle and female ſlaves are not conſidered in ſuch a caſe as conſtituting a debt; and it is intimated in the gloſs of the *Mitácſhará*, that they do not conſtitute a debt: ſince they belong to the original maſter alone, they do not fall under the deſcription of debt. Yet, if female ſlaves and the reſt be at any time accepted as loans by any perſon, then the limit of intereſt ſhould be deemed the ſame as on gems, *gold*, and the like; for no ſpecial rule has been delivered.

"Cattle" is underſtood in the feminine gender, from the contiguous term "female ſlaves;" hence it is rightly expounded, female goats and the like, and cows and female buffaloes and the like: in fact the term "female *ſlaves*" is a general illuſtration.

LXVI.

VAŚISHT'HA:—Gold, ſilver, and gems, may be doubled; grain trebled; fluids, *as ſugar juſt expreſſed*

preſſed and the like, are under the ſame law with grain; and *ſo rare* flowers, roots, and fruit: what is ſold by weight, *except gold and the like,* may make the debt eight fold.

"Fluids;" the juice of ſugar-cane and the like: theſe alſo are trebled. The *Retnácara.*

It is expounded, juice of ſugar-cane and the like, becauſe it will be declared, that oil, ſalt, and ſimilar commodities, are increaſed eight fold.

"And flowers, roots, and fruit;" by the particle "and" the phraſe is connected with the word trebled, to which the ſenſe of the text reverts: the conſtruction therefore is, "ſo flowers, roots, and fruit, are alſo trebled." CHANDÉSWARA gives a ſimilar expoſition. In the *Viváda Chintámeni* it is obſerved, that intereſt on the produce of fruit, inſects and ſheep, and on flowers, roots, and fruit, is declared by CÁTYÁYANA (LX), and by VAŚISHT'HA (LXVI) to make the debt double, and treble. The paſſage at large will be quoted from MISRA in another place.

"What is ſold by weight;" literally, what is held in the ſcale; namely, at the time of ſale for the purpoſe of determining its quantity; and that is camphor and the like. Although gold and the reſt be likewiſe ſold by weight, yet they cannot be intended by the text, becauſe a ſpecial law, limiting accumulation to twice the principal, oppoſes *that conſtruction.*

Intereſt on grain trebles the debt (XLIV 2). Grain may be doubled at the time of harveſt, that is, when new grain is gathered; it may be doubled at that ſeaſon, even within two or three months from the *date of the* loan. But, if not repaid at the ſeaſon when new grain is gathered, it is trebled, and bears no further intereſt. "So may wool, &c." wool and cotton bear the ſame intereſt with grain. "Fibres of graſs," or reeds, and graſs and the reſt, may be increaſed eight fold in one year. Such is the ſenſe of the text (XLIV 2) The *Retnácara.*

From this gloſs it follows, that intereſt on grain *only* trebles the debt. Conſequently, VISHNU, YÁJNYAWALCYA, VAŚISHT'HA and HÁRÍTA, propound *the limit of intereſt on grain at* three times the principal. But this contradicts the accumulation ſtated

in the texts of many Sages, " three times, four times, and five times the principal."

On this point Misra ſays, if the price of grain, after the crop is produced, have fallen below the price it bore at the time when it was lent before the harveſt, the debt may be trebled; if the price be more reduced, quadrupled; if ſtill more reduced, quintupled; but when the price has fallen very little, the debt is only doubled: and he expounds the text (XLIV 2) otherwiſe, as will be mentioned. According to this gloſs, it appears, from the circumſtances mentioned, " lent before the harveſt, and repaid at the time of harveſt," that the limits of intereſt are not ſtated in *the text:* conſequently, when intereſt is received at the legal rate of an eightieth part and ſo forth, how far does accumulation extend? To this queſtion there is no anſwer. If it be affirmed, according to this expoſition, that intereſt doubling or trebling the debt is oppoſed to the rate of an eightieth and ſo forth, then it contradicts the *Retnácara;* for there intereſt is ſtated at two in the hundred and the like, and it is inconſiſtent with reaſon to admit a different rate of intereſt upon grain from *that, which is preſcribed for* other articles. This and other objections may be ſuggeſted.

The author of the *Retnácara* reconciles the ſeeming inconſiſtency of ſuch forms *of intereſt*, by diſtinctions relative to the good or bad qualities of the borrower, and the differences of time and place. 'Súlapáni holds, that the texts ſhould be expounded according to the length or ſhortneſs of the period elapſed. In the *Viváda Chintámeni* ſeveral modes are ſtated.

The opinion, intimated in the *Retnácara*, is, that intereſt on grain doubling the debt at the time of harveſt, ſimilar intereſt on wool and cotton, and intereſt on reeds, graſs and the reſt, making the debt octuple in one year, concern debtors of mixed claſſes; for, ſtating the *firſt* text of Hárita (XXXIV and XLIV 1) as intending borrowers of mixed claſſes, the author cites the other text (XLIV 2), prefacing it with the word " ſo;" elſe, if it only concerned the limits of intereſt, it would be incongruous to cite it under that *other* title. Accordingly, in his gloſs on the text of Cátyáyana (LX), he expounds " produce of fruit " cotton and the like. But intereſt trebling the debt is ſtated as the limit of intereſt; for that coincides with the text of Vasisht'ha (XLVI).

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It is ſaid, intereſt on reeds, graſs and the reſt, makes the debt octuple at the cloſe of one year; what is the accumulation on produce *of fields*, and on beaſts of burden and the like? The anſwer is, when twice the principal is the limit of intereſt, there the order of claſſes is ſuppoſed: in other circumſtances, the rate of intereſt on produce, on beaſts of burden and the like, is different; and the rate aſſumed is that which is propounded by HÁRÍTA for reeds, graſs and the reſt; ſince it is a rule, that a conſtruction of law, eſtabliſhed in one caſe, is alſo applicable to other caſes, unleſs there be a *ſufficient* objection. As an accumulation raiſing the debt eight fold at the cloſe of one year is declared to be the limit of intereſt on clarified butter and the reſt, ſo five fold *is the limit* on produce, beaſts of burden, and the reſt. But, in fact, ſince there is no law to ſerve as authority for ſuch an inference, the rate of an eightieth part, and ſo forth, on produce, *beaſts of burden* and the reſt, ſhould be received from men of mixed claſſes, as well as from *Bráhmanas* and the reſt. Such is the principle *of the law*.

But, in the caſe of *Bráhmanas* and the reſt, three times, four times, and five times the principal (to be eſtabliſhed according to the qualities of the debtor), at the ſame periods, in which intereſt may accumulate at the rate of an eightieth part and ſo forth, ſo as to double the principal which has been lent to men of mixed claſſes, and made payable at the time of harveſt, fall under the deſcription of ſtipulated intereſt, and are therefore immoral. Not being ſtipulated in a time of extreme diſtreſs, would it not be intereſt which need not be paid? It might be ſo; but it would be paid by the debtor, that he may be able to borrow again. Such is the principle *of the law*. In fact, having been ſettled by many former debtors, it muſt be *now* paid, though not ſtipulated in a time of extreme diſtreſs; as has been already mentioned. When the borrower himſelf fixes the rate of intereſt, then only is it required, *as a condition*, that it ſhould be ſtipulated in a time of extreme diſtreſs.

But MISRA expounds the text of HÁRÍTA (XLIV 2), ſince "a year" may ſuggeſt other periods, ſuch as fifty months and the like, if the principal *lent in kind* be alone conſidered, it may be doubled or trebled, or, as ſtated by other Sages, quadrupled or quintupled; the intereſt is regulated by the price. As an in-

 ſtance

ſtance of the variation of intereſt with the difference of price, he adduces the text of MENU (XXXIII); and he reads the text of HÁRÍTA (XLIV 2), grain may be doubled "if the principal *alone* be *conſidered*" (*mulê*), inſtead of grain may be doubled "at the time of harveſt" (*tulê*).

On this ſome remark, that with all *debtors* grain is doubled at the time of harveſt, that is, when new grain is gathered; by this ſpecial rule the rate of an eightieth part and ſo forth is barred: but intereſt for one or two months muſt be regulated by proportionate ſubdiviſions; and the higheſt intereſt makes the debt three fold. Such is HÁRÍTA's meaning; and the *apparent* contradiction to the texts of other Sages muſt be reconciled as before. "So wool and cotton;" intereſt on theſe alſo doubles the principal, and precludes the rate of an eightieth part and ſo forth. To the queſtion, when *does the principal become doubled?* the Sage replies, "in one year." He ſubjoins the limits of intereſt on graſs, reeds, and the like; "but graſs, &c. may be increaſed eight fold."

That is not *accurate;* for men of the commercial claſs and the like would be liable to repay grain doubled at the time of harveſt. Thus, were ſuch the rule, a mercantile man, borrowing grain in the month of *Aſhhád'ha* to the quantity of a hundred thouſand *praſt'has*, for the purpoſes of commerce, would be ſubject to commercial loſs by repaying twice the grain borrowed; which is contrary to reaſon. But there is no objection to the rule, ſo far as it concerns men of mixed claſſes not qualified for trade, although unable to ſubſiſt by other modes. To eſtabliſh a different rate of intereſt on grain, wool and cotton, from that preſcribed on all *other* articles, is contrary to reaſon. Accordingly this gloſs is ſtated in the *Retnácara* on the text of MENU (LXI); "any ſuch debtor, who has borrowed grain or horſes, valued at a hundred pieces of money, on intereſt at the rate of two in the hundred, &c." At the time of harveſt, grain, wool or cotton is doubled; at the expiration of a year, it is only trebled. By the particle "only," the rate of an eightieth part and the like is prohibited. But graſs and the reſt may be increaſed eight fold. Although the limits of intereſt, extending to four and five times the principal, might be reconciled in the ſame mode, by expounding the text as relating to debtors of mixed claſſes only, and

and by diſtinguiſhing moral and immoral exactions; yet, not having been ſtated by any author, this cannot be admitted.

It muſt, however, be examined how the limits can be regulated on the cheapneſs or dearneſs of grain. This difficulty is *thus* reconciled: ſince it is ſhewn by the particle "only," in the text of HÁRÍTA ("or trebled only," XLIV 2), that the natural limit of intereſt is the accumulation which trebles the principal; and ſince an accumulation raiſing the debt to four or five times the principal is ſubordinate thereto; a debt is quadrupled and quintupled in that period only which ſhould *naturally* treble the debt; for, whatever were the value of the grain lent, three times that value is due at the period of repayment: if thrice the quantity of grain be *ſufficient*, the grain is trebled; elſe it is quadrupled: ſhould that alſo be inſufficient, it is quintupled; but if this again be inſufficient, MENU forbids any further demand (LXI). Even though three times the value could be liquidated with twice the quantity of grain in conſequence of a great advance in price, double the quantity of grain ſhould not be paid; for no law *authorizes this reduction.*

The qualities of the debtor ſhould be underſtood of his adherence to his own regular mode of ſubſiſtence, his adherence to the modes of ſubſiſtence authorized in times of diſtreſs, his following the dictates of his own *perverſe* will, and ſo forth. According to the gloſs delivered in the *Dípacalicá*, the accumulation depends on the length or ſhortneſs of the period elapſed: if the period be ſufficient to treble the debt, it is trebled; if the period, in which a debt is increaſed four fold, be complete, it is quadrupled; if the period be ſufficient to make the debt quintuple, it is quintupled. To this very rule of adjuſtment the *Retnácara* alludes in ſuggeſting diſtinctions according to the difference of time. Although there be no gloſs of authors on the texts of Sages *fully explaining this adjuſtment*, inferences may be drawn by the wiſe, through a ſimple exertion of their own intellect.

A rule of adjuſtment may be formed on circumſtances of *particular* diſtreſs affecting the debtor, or on the circumſtance of general dearth. The *Mitácſhará.*

To this it may be objected, when are thoſe limits of intereſt to be admitted according to this opinion? Whether all theſe modes, ſanctioned by very learned authors, ſhould be received,

 or

or which ſhould be ſelected, the wiſe themſelves muſt determine.

The ſeaſon of gathering new grain muſt be extended to wool. But, in fact, intereſt on grain doubling the principal at the time of harveſt, appears to be merely ſtipulated intereſt; for it has been ſtated by CHANDÉSWARA when treating of ſtipulated intereſt. This has been already noticed. Accumulation of intereſt, raiſing the principal three fold, four fold, or five fold, which are in the nature of limits of intereſt, muſt be regulated on the difference of countries. In this province the rates of an eightieth part and ſo forth occur not in practice on loans of other things than ſilver coins and the like; but intereſt on grain and the reſt, ſimilar to the ſtipulated intereſt deſcribed by HÁRÍTA, occurs *in practice*. In ſuch caſes, when the debt has long remained *due*, thrice the value is ſometimes, and in ſome places, adjudged by arbitrators. We think the text of NÁREDA (XLV), as expounded in the *Retnácara*, ſufficient authority to maintain local uſages.

Some think it a ſimple conſtruction, that the creditor ſhould receive his principal doubled, trebled, quadrupled, or quintupled, in the order of the claſſes, from *Bráhmanas* and the reſt. This conſtruction is almoſt *literally* ſtated in the *Vivāda Chintámeni*. It would be vain to offer more numerous interpretations of the text.

In reſpect of cloth, CÁTYÁYANA ordains that intereſt ſhall make the debt double; VRĬHASPATI, treble; YÁJNYAWALCYA, quadruple. The ſeeming contradiction ſhould be reconciled, as in the caſe of grain.

LXVII.

VRĬHASPATI:—On pot-herbs the intereſt may make the debt quintuple; on ſeeds, and ſugar-cane, ſextuple; on ſalt, oil, and ſpirits, octuple:

2. So on molaſſes and honey, if the things lent have remained during a long period.

"Seeds;" ſeed of corn and the like: on that and on ſugar-cane, *ſextuple*. Intereſt may make the debt octuple, if the things lent have remained for a long period; that is, for ſuch a period as duly increaſes the debt eight fold.

LXVIII.

CÁTYÁYANA:—For all ſorts of oil and ſpirituous liquors, for meaſures of clarified butter, for molaſſes and ſalt, the intereſt is held legal, though, *with the principal*, the debt be made octuple.

LXIX.

VRĬHASPATI:—For graſs, wood, bricks, thread, and ſubſtances from which wine or ſpirits are extracted, for leaves, bones, *ivory or ſhells*, and leather, for weapons, *common* flowers and fruits, no intereſt is ordained *without agreement*.

" Subſtances, from which wine or ſpirits are extracted;" *alluding to* a ſubſtance from which an inebriating liquor is drawn, and which is commonly named *cut'h*. " Bones;" teeth, conchs and the like. " Leather;" the hide of the black antelope and the like. " Weapons;" arms. The apparent contradiction to the intereſt ſpecially ordained on flowers and fruits is reconciled by ſuppoſing rare flowers and fruits in one inſtance, and common flowers and fruits in the other. To this gloſs the *Retnácara* ſubjoins the following text.

LXX.

VISHNU:—On ſubſtances from which wine or ſpirits are made, on cotton-thread, on leather, armour, weapons, bricks, or charcoal, which are not liable to loſs, *the intereſt* may make the debt double.

There the mention of conchs ſuppoſes the countries in which they are common: and the ſame obſervation may be made on other ſubſtances. Since the text of VAŚISHT'HA (LXVI) propounds intereſt ſpecially ordained and trebling the debt, whence ariſes an apparent contradiction, therefore the commentator, on the grounds of this text, holds, that intereſt accrues on rare fruits and flowers, ſuch as nutmegs and cloves, which are meant in the

the rule of VISHNU; but none on common fruits and flowers, which fall under the general deſcription of "graſs, and the like." On cotton, as in the text of CÁTYÁYANA (LX), intereſt makes the debt double; but according to HÁRÍTA it may treble the debt: this is connected with the difference of borrowers; or may be regulated on the commonneſs or rarity of the thing, and on the different ſorts of cotton, in the ſame manner with *intereſt on* grain, or *in proportion to riſk.* "Which are not liable to loſs;" on which, when lent, intereſt doubling the principal is not *probably* loſt.

But MISRA, citing the text of VRĬHASPATI (LXIX), adds, "this is intended to forbid intereſt not agreed on, but intereſt *on these articles* may be promiſed through the exigency of affairs: accordingly CÁTYÁYANA and VAŚISHT'HA (LX and LXVI) propound intereſt doubling and trebling the debt." It is thereby intimated, that on other articles, if it be not ſpecially declared when the debt is contracted, either that it bears intereſt, or is free of intereſt, the creditor cannot afterwards receive intereſt.

BHAVADÉVA reads *tuſha* bran or chaff, inſtead of *iſhtacá* bricks; and inſtead of *cinwa*, a ſubſtance from which wine or ſpirits are extracted, he reads *citta*, which he explains dirt, meaning cow-dung and the like.

Here both opinions (MISRA's and CHANDÉSWARA's) ſeem right: thus, if intereſt have been promiſed on any thing, however common, it ſhould be paid; and intereſt on rare things, even though not expreſsly promiſed, ſhould be paid, for they are ſimilar to gems, *gold*, and the like. Both inductions are conſiſtent with reaſon. Where intereſt accrues, becauſe the articles are acknowledged ſcarce, on cloves, *fine* cauries, conchs, rhinoceros' horn, ſtones of great virtue and price, vitreous ſubſtances and the like, the limits of intereſt muſt either be taken at three times the debt or the like, under the texts of VAŚISHT'HA and others (LXVI &c.), or at twice the debt, under the general texts of GÓTAMA and others (LIX &c).

"Of intereſt on loans this is the univerſal and higheſt rule &c." (XLV); this rate of an eightieth part and ſo forth is univerſal, for it is preſcribed by the law. The *Retnácara.*

And the ſubject of limited intereſt is conſidered in codes of law. But the rate cuſtomary in the country may be different;

that

that is, may be contrary to the univerſal rate. The Sage deſcribes cuſtomary rates (XLV 2); "country" is there a mere inſtance, ſuggeſting uſage founded on ſeaſons, on difference of claſs, and ſo forth. "Double, treble," and the like, are mere examples; more or leſs therefore are comprehended in the text. This text is accordingly cited as authority to prove ſpecial intereſt payable by debtors of mixed claſſes, as ſtated in the *Retnăcara*. In ſome provinces the principal is either repaid with intereſt amounting to half the principal, or is doubled, in others *the uſual intereſt is different.*

If the borrower, being diſtreſſed, promiſed ſtipulated intereſt, when he received the loan, at ſix or ſeven in the hundred, his debt is doubled in a few days more than ſixteen months; after that period, does intereſt ſtop, or does it continue to the end of fifty months? It is anſwered, ſince the law does not authorize more than double the principal, intereſt then ceaſes. Is it not ſolely when the rate of intereſt is the eightieth part of the principal, that the debt can be only doubled; but when a higher rate of intereſt is ſettled, may not ſo much be taken as is the accumulation of intereſt in fifty months; elſe ſtipulated intereſt and the like would not exceed the rate preſcribed by law? Intereſt on a debt ſecured by a pledge is declared to run ſix years and eight months, becauſe the principal may be doubled in that time; *on the above ſuppoſition,* a loan, for which neither pledge nor ſurety had been received, would alſo bear intereſt for the ſame period, and Sages would hold that it might be trebled or quadrupled: for what purpoſe then has it been declared, that intereſt ceaſes after fifty months. Conſequently, no particular period is fixed for the ceſſation of intereſt, ſince fifty months and eighty months would be mutually contradictory: but on ſuch and ſuch ſubſtances lent, ſuch and ſuch accumulation of intereſt is limited. Thus the whole *law* is conſiſtent.

Again; if a debt have been contracted on a pledge given, and by the caſual loſs of the pledge the debt become unſecured by pledge or ſurety, in that caſe alſo intereſt ſhould be taken ſo long as twice the principal have not been received by the creditor; but, after that *has been received,* intereſt ceaſes. It is evident, that ſtipulated intereſt and the reſt may exceed the intereſt allowed by law, if the debt be diſcharged, *in the caſe propoſed,* within ſixteen months.

Art.

Art. III.—*On Debts bearing no Intereſt.*

LXXI.

Náreda :—A commodity, the price *of a commodity*, wages, a depoſit and *the like*, a fine to *the king*, a thing clandeſtinely taken *without a deſign to ſteal it*, a thing idly promiſed, and a ſtake played for, carry no intereſt *before demand* without a ſpecial agreement.

The text is read *panya múlyam*, the price of a commodity ſold: *but*, a commodity purchaſed, *and not received*, falls under the deſcription of a depoſit. On the other reading, *panyam múlyam*, the ſenſe is, a commodity ſold *but not delivered*, and the price *of a commodity purchaſed but not received*. Thus, if a thing ſold happen to remain with the firſt owner, it carries no intereſt without a ſpecial agreement. "Wages;" hire. "A depoſit;" a bailment. Intereſt after ſix months on the price of a commodity, and on a depoſit not delivered after a demand (LVI), has been already declared; therefore intereſt is only prohibited before a demand. More on this ſubject ſhould be ſtated in the chapter on Depoſits.

"A fine," ſuch as the higheſt amercement and the reſt. "A thing clandeſtinely taken;" obtained by fraud and the like.

The *Retnácara*.

For inſtance, one has received money from another, pretending that he will deliver him from ſome preſent or future danger of oppreſſion by the prince; but afterwards, the condition being broken, either by non-performance of his undertaking, or becauſe the danger was merely pretended, and repayment of the money being therefore required, it need not be paid with intereſt. Again; a hundred pieces of money have been extorted by ſome rogue, threatening a man of ſubſtance to accuſe him of a crime before the prince or his kindred, unleſs he give him a hundred pieces of money; in that caſe they muſt be received back without intereſt. Such caſes are meant by the expreſſion, "obtained by fraud or the like."

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" A thing idly given or promiſed," given on no religious conſideration, and not delivered. From the term " idly " it appears to be the Sage's meaning, that, if a gift made on a religious account be not forthwith delivered, intereſt ought to be paid at the rate preſcribed by law: ſince it is declared by a text cited in the *Malamáſa tatwa* to be a theft, when gold, *given but* not delivered, is loſt. If it be loſt through *ſlight* negligence, ſo much only *as is its value* muſt *the giver* make good; but, if gold, *given but* not delivered, be loſt and *not made good*, the giver would be guilty of theft. By parity of reaſoning, if it be not loſt, it muſt bear intereſt *ſo long as it is withheld.* It ſhould not be objected, that this concerns gold alone. The theft is not denied in the caſe of other articles; or, ſuppoſing it to concern gold alone, the term " idly " muſt likewiſe except the caſe of gold only. However, intereſt is not now paid, any more than on amicable loans.

Some man of ſubſtance, in a time of diſtreſs, or when going to a foreign country, diſtributes his property; for inſtance, *he aſſigns* certain hundred *ſuvernas* to his ſpiritual preceptor, *conſecrates* eighty *ſuvernas* to a certain deity, *aſſigns* ſixty *ſuvernas* to a certain prieſt, thirty *ſuvernas* to a certain dancer, five *ſuvernas* to a courteſan formerly enjoyed, and diſtributes the remainder of his property in due ſhares *according to the law of ſucceſſion*: but, from the preſſure of affairs, the ſums given away have not been delivered. In that caſe, when he happens to be relieved from that diſtreſs, or when he returns from abroad, and intereſt is propoſed on thoſe gifts as debts demandable on his aggregate wealth, the ſums given on religious conſiderations muſt be delivered with intereſt, but the principal only of the ſums given to dancers and the like ſhould be paid. This alſo ſome lawyers hold *to be intended by the text.*

" A ſtake played for;" money won in gaming. " Without a ſpecial agreement;" not expreſsly declared by both parties to bear intereſt. " Carry no intereſt;" do not bear intereſt.

Some perſon, having ſold a thing, tells the purchaſer, " Let this your property be a loan to me; I will pay intereſt for it." Or an indigent perſon, employing a ſervant on neceſſary work, but unable to pay his wages, tells him, " I will borrow money elſewhere and pay thy wages; or let them be *forborne*, and I will pay thy wages with intereſt." In ſuch caſes of poſitive agreement, there may be intereſt promiſed on a commodity ſold, on

 wages

wages and the reſt: and then only is intereſt due. But, if there be no ſuch agreement for intereſt, this text is intended to forbid intereſt in that caſe.

1ſt, If any thing be given by ſome perſon to another as a loan, as a complimentary preſent and the like, or as a gift on a religious conſideration, and by reaſon of the donee's abſence it be committed to another, and long after received by the donee, it ſeems to be ſimilar to a depoſit: does, or does it not bear intereſt while remaining in the hands of the intermediate perſon? This is one doubt *which may be propoſed.* 2dly, *In the caſe of ſale without ownerſhip,* the buyer is juſtified by producing the ſeller, and the owner recovers his property (Book II. Chap. ii. V. 29): when the owner recovers his property after the lapſe of a long period, muſt, or muſt not, intereſt be paid? This is a ſecond doubt *which might be propoſed.* 3dly, Some money has been obtained for the king or his officer, from ſome perſon accuſed of a crime; afterwards, the accuſation being diſproved, the money muſt be refunded by the king or his officer; or if it be true in forenſick practice, that it ſhould be made good by the accuſer, muſt, or muſt not, intereſt be paid thereon? This is a third doubt *which might be propoſed.*

On the firſt doubt,

LXXII.

SAMVERTA:—There ſhall be no intereſt on the property of women *lent amicably by them to their kinſmen,* nor on intereſt itſelf, nor on a depoſit, *nor on any thing* ſo committed *in truſt,* nor on a ſum which is dubious *or unliquidated,* nor on a ſum due by a ſurety, unleſs it be mutually ſtipulated.

"Committed;" placed with an intermediate perſon.

SÚLAPÁNI in the *Dípacalicá.*

This text is found in the treatiſe of YÁJNYAWALCYA, but its inſertion there is not approved by SÚLAPÁNI and others.

"On a depoſit ſo committed;" *or ſo remaining with the depoſitary:* not detained after a demand. The *Retnácara.*

Thus

Thus a thing committed to an intermediate perſon is merely a ſort of depoſit: and "committed" is an epithet of depoſit; elſe the circumſtance of its not being detained after a demand would be unmeaning, ſince intereſt is not ordained on a thing committed *in truſt*, after the lapſe of ſix months: but even on a thing ſo committed, and not reſtored on demand, intereſt accrues after a demand at the expiration of ſix months. But if the word depoſit be there taken in a general ſenſe, it is proper to do the ſame alſo in the preſent inſtance *(that is, allow intereſt after the lapſe of ſix months if the thing have been demanded)*.

But how can intereſt be allowed in that caſe after the lapſe of ſix months, according to the interpretation of 'SÚLAPÁNI? It is anſwered, the word "and" in the text of CÁTYÁYANA (LVI 2) connects *the ſentence* with what is not mentioned. More on this ſubject we ſhall deliver in the chapter on Depoſits.

"On the property of women," as deſcribed of ſix ſorts: *on ſuch property* taken by their *huſbands or other* protectors, there ſhall be no intereſt. The *Retnácara*.

Here "protector" is a general term comprehending ſons and the reſt. CÁTYÁYANA propounds a diſtinction.

LXXIII.

CÁTYÁYANA:—Neither the huſband, nor the ſon, nor the father, nor the brothers, have power to uſe or to aliene the legal property of women.

2. If any one of them ſhall conſume the property of a woman againſt her conſent, he ſhall be compelled to pay *its value with* intereſt *to her*, and ſhall alſo pay a fine to the king.

3. But, if he conſume it with her aſſent, after an amicable tranſaction, he ſhall pay the principal only, when he has wealth *enough* to reſtore it *.

By the expreſſion "againſt her conſent," or forcibly, unamicable tranſactions *are* ſuggeſted: conſequently, ſhould he conſume her

* Book V. Chap. ix.

her property not amicably lent to him, intereſt muſt neceſſarily be paid; but there is no intereſt on the property of a woman amicably lent *to a kinſman*. The text of SAMVERTA muſt be applied to that caſe only. From the term "protector" uſed in the *Retnâcara*, *it appears* that intereſt muſt only be paid by others than her huſband, her ſon, her father, or her brother. For in the third verſe of CÁTYÁYANA an agent muſt be ſought for the act of conſuming her property after an amicable tranſaction, and that agent occurs in the preceding verſe (LXXIII 2), "any one of them." A daughter, a mother, and a ſiſter are entitled to borrow the ſeveral property of a woman on amicable terms, without intereſt; for the affinity is the ſame, the *conſiderations of* duty the ſame, and natural affection the ſame. But intereſt muſt be paid by the huſband's father or mother. Yet, what objection there could be to place the father-in-law and the reſt on the ſame footing with a brother, muſt be determined by the wiſe.

On this ſubject ſome affirm, that the phraſe "neither the father nor the brother" intends the father's lineage generally; "neither the huſband nor the ſon" intends the huſband's lineage generally: and the ſame ſhould be argued in reſpect of the mother's family. When it has been expreſsly declared by the woman, at the time the loan was made, that no intereſt ſhould be paid, in that caſe none need be paid by any perſon. The phraſe "when he has wealth *enough* to reſtore it" intimates, that the property of a woman borrowed by a kinſman involved in diſtreſs, muſt only be paid when he is relieved from diſtreſs.

The term "property of women," in the text of SAMVERTA above cited (LXXII), has been already expounded. *He proceeds*, "nor on intereſt:" here alſo the circumſtance ſuppoſed in the caſe of a depoſit muſt be underſtood, "not detained after a demand;" for it is declared, that the balance of intereſt bears intereſt (LVI 2). But *this can only be claimed* after the principal has been diſcharged. Accordingly BHAVADEVA ſays, "the balance of intereſt on a ſum paid."

In the ſecond doubt propoſed, is it queſtioned whether intereſt ſhall be paid for ſo long a period as the thing remained in the thief's poſſeſſion, with or without the knowledge of the owner, before it was adjudged; or whether it ſhall be paid for the period

riod during which the thing remains unreſtored through the wiles of the thief, after the owner's property has been adjudged in a judicial proceeding or the like? As to the firſt ſuppoſition, it is provided in the text of SAMVERTA (LXXII), "nor *any intereſt* on a ſum which is dubious *or unliquidated*, nor on a ſum due by a ſurety, unleſs it be mutually ſtipulated."

"A ſum which is dubious or unliquidated;" of which it was firſt queſtioned whether it were due or not: *on ſuch a ſum*, even though ſubſequently adjudged to be due, there is no intereſt.

The *Retnácara.*

But if it be adjudged to have been originally not due, of courſe there can be no intereſt; *for the greater includes the leſs*, as the ſtaff *is impure if it can defile* the bread.

In fact, the conſtruction of the text (Book II. Chap. ii. V. 29) gives this *ſenſe*, "the buyer is juſtified by producing the ſeller, and the owner recovers his property by the production of the ſeller." Before the ſeller or thief be produced, the owner's property is not revived. Accordingly RAGHUNANDANA, in the *Práyaſchitta tatwa*, ſays, "the owner of property loſt." If his property ſubſiſted at that time alſo, the gloſs, "owner of loſt property," would be irrelevant. If a ſtolen bull be ſold to a YAVANA, and caſtrated by him, or the like, expiation muſt be performed *by the owner*, on account of ſome negligence *which gave opportunity for the robbery.*

The production of the ſeller is proof which juſtifies the buyer by eſtabliſhing the ſale; the owner recovers his property by the detection of the theft. Thus the buyer is juſtified by producing the ſeller for proof of the ſale; and the owner recovers his property by proof of the theft. Hence the owner has not *actual* property, even while the cauſe is pending. Or if the text be explained, "from him by whom the thing was ſold, the owner recovers his property, the king receives a fine, and the buyer receives the price," ſtill the owner's property is only revived on the reſtoration of the thing by the thief or other perſon; and it is only reſtored after the judicial proceeding. Accordingly it is declared by a text of the *Viſhnu dhermóttera* (Book II. Chap. ii. V. 32), that theft creates property: hence, if ſuch property be lent, the robber may receive intereſt; and ſome benefit may ariſe from ſuch *ſtolen* goods applied to religious uſes.

VÁCHESPATI BHATTÁCHÁRYA admits the robber's property in ſtolen goods. According to his opinion, the import of SAMVERTA's expreſſion, "what is dubious," is thus ſtated: a man requeſted by another to give him a ſilver coin, and thinking that he aſks it as a loan, gives the money by way of loan; but he who receives it entertains a doubt, "I have done him a benefit; he is a friend, and is rich; does he give me this money for conſumption, or does he lend it to me?" The matter being afterwards conteſted, intereſt, even though it be adjudged to be payable, need not be paid for the period preceding that *adjudication.*

Some hold, that, by ſaying "the owner recovers his property," his ownerſhip is fully eſtabliſhed. The gloſs, "owner of loſt property," is intended to indicate the former owner, as a ſolution of the doubt, whether ownerſhip was then veſted in the buyer, or in the former owner: it ſignifies him whoſe property was miſſing; who did not exactly know where his chattel was. If a ſtolen bull be caſtrated, or the like, the owner muſt perform penance to expiate his want of ſufficient care. Accordingly in the *Práyaſchitta Vivéca,* after deſcribing as theft the act of one who reſolves to diſpoſe at his pleaſure of what he well knows to be the property of another, 'SÚNAPÁNI ſays, a robber has not property in ſtolen goods. Hence a ſale made by him, being a ſale without ownerſhip, is invalid; and YÁJNYAWALCYA's expreſſion, "the owner recovers his property," is accurate.

On the ſecond caſe of the ſecond doubt *(does it bear intereſt after adjudication?)* it is ſaid, there can be no opportunity for fraudulent detention, ſince the king immediately compels reſtoration of the chattel. But if a long period elapſe in conſequence of inability *to enforce the demand* or the like, then, ſince the man is guilty of an offence, and the caſe is not ſpecified under the title of Prohibited Intereſt, therefore intereſt muſt be paid; and ſince no particular period is directed under the head of Intereſt without a ſpecial Agreement, it is proper that intereſt ſhould commence from the date of the demand. This might be further diſcuſſed under the title of Theft.

"Nor *any intereſt* on a ſum due by a ſurety" (LXXII); *literally for ſuretiſhip:* the act of a ſurety is ſuretiſhip, as the act of a thief is theft: and that *act of a ſurety* is *an undertaking* for

the payment *of a debt*. Thus, if a debtor die, or be reduced to the utmoſt poverty, the debt, with the intereſt *which has accrued*, muſt be paid by the ſurety. In that caſe the whole amount of principal and intereſt due by the *original* debtor is the ſame with the principal due by the ſurety; for he cannot be ſolely liable for the original debt. The text of SAMVERTA reſolves the doubt, whether the ſurety muſt give further intereſt if he delay payment.

LXXIV.

CÁTYÁYANA:—No intereſt is ever *due* on leather, on *ſtraw or* produce, on the intoxicating liquor called *áſava*, on a ſtake played for, on the price of commodities, on a woman's fee, nor on what is due on account of ſuretiſhip.

"On leather" intereſt is only forbidden without a ſpecial agreement; or on common leather: for the rule of VISHNU (LXX) ordains intereſt on leather, making the debt double. "Straw *or produce*" (*ſaſya*); the ſtems of corn. In reſpect to this alſo the rule is ſimilar. "The intoxicating liquor called *áſava*;" a particular ſort of wine. Intereſt on *áſava* or ſpirituous liquors has been propounded by CÁTYÁYANA and VRIHASPATI (LXVIII and LXVII): although this might be reſtricted to other kinds of inebriating liquors except *áſava*, yet as the word "all" in the text of CÁTYÁYANA (LXVIII) muſt be extended to ſpirituous liquors, intereſt on all ſorts of inebriating liquors, *áſava* and the reſt, is *thereby* ſuggeſted. Hence the adjuſtment muſt be the ſame as in the caſe of leather.

"A woman's fee;" a nuptial gift payable on an *Áſura* marriage, and ſo forth: a gratuity payable to a courteſan, or the like, falls under the deſcription of things given on a falſe *or immoral* conſideration, as ſtated by NÁREDA (LXXI). "What is due on account of ſuretiſhip;" what is become due from a bondſman on account of his ſuretiſhip.'

It is here implied, that no intereſt is due on leather and the reſt, without a ſpecial agreement. The *Retnácará*.

The uſe of this reſervation, "without a ſpecial agreement," has

has been explained in respect of leather, straw or produce, and *āsava*. In respect of a stake played for, the price of a commodity, and a woman's fee, it is founded on the coincidence of the text of NÁREDA (LXXI); and in respect of what is due on account of suretiship, on its coincidence with the text of SAMVERTA (LXXII), "nor *any interest* on a sum due by a surety, unless it be mutually stipulated." Here the inferible sense is, that common leather and the rest, on which interest had not been stipulated, do not, like deposits and the rest, carry interest, even though withheld after a demand.

CÁTYÁYANA and SAMVERTA (LXXIV and LXXII) prohibit interest generally on a sum due by a surety; if a debtor die, his surety being therefore liable for payment, would he not be liable for the payment of the principal only without interest? On this objection VYÁSA propounds a rule concerning interest upon the original sum lent.

LXXV.

VYÁSA:—A sum, for which a man is *merely* a surety, a sum secured by a pledge *to be kept only yet* used, a debt not received from a debtor tendering it, part of a loan remaining in the hands of the creditor, a fine imposed, a nuptial gift, and a sum *only* promised, carry no interest.

On a sum for which a man is merely a surety he shall pay interest only to the amount of double the principal: it is not again doubled while due by the surety. MISRA.

A sum secured by a pledge to be kept only yet used, bears no interest; for in the case of using a pledge which may be used, the use of the pledge is interest; and in the case of the unauthorized use of a pledge liable to be used, half the interest only is forfeited, as will be shown. It is accordingly declared by YÁJNYAWALCYA, "there shall be no interest if a pledge for custody only be used" (LXXXIV.)

"A debt not received *by the creditor* from a debtor tendering it;"

it;" thus a debtor offers payment within two or three months after the receipt of the loan, but the creditor refuses *to accept* payment; in such a case the sum bears no *further* interest.

LXXVI.

Yájnyawalcya:—Property lent, which the creditor will not receive back, when tendered, must be deposited with a third person, and bears no interest afterwards.

A sum tendered by the debtor, which the creditor will not receive, bears no interest afterwards, provided it be deposited with a third person. The *Dípacalicá*.

Consequently, if the debtor wishes to pay no further interest, he must place in the hands of a third person the debt *tendered by him and* refused by the creditor: unless it be so deposited with a third person, it carries interest. Accordingly Chandéswara cites the text of Yájnyawalcya with this remark, "a debt not received from a debtor tendering it carries no interest: on this subject the Sage declares a *provisional* condition:" here the condition is, that the sum be deposited with a third person. In the text of Vyása also (LXXV), concerning a debt not received from a debtor tendering it, a bailment to a third person must be understood; for it has the same import with the text of Vájnyawalcya.

LXXVII.

Vishnu:—Property lent bears no further interest after it has been tendered, but refused by the creditor.

Here also the condition, that it be deposited with a third person, should be understood; and it must be admitted by the followers of Chandéswara, that this concerns a debt contracted for no specifick period; else the limitation, "let no lender receive interest beyond the year" (XLI), would be irrelevant *to the*

cases supposed by CHANDÉSWARA. It should not be affirmed, that the text may be thus applied, "receiving the principal within the period, let him take interest to the end of the period stipulated." If no interest be received even though the debt remain, it is an ill construction that interest can be received when no debt is due. According to other opinions, the same rule should be understood even in the case of a loan for a specifick period. A distinction, however, will be mentioned in respect of loans for a specifick period secured by a pledge.

"Part of a loan remaining in the hands of the creditor" (LXXV); the term is expounded in the *Retnácara*, what is under the influence of the creditor. This gloss may also be explained in the form of apposition called *bahubríhi;* that of which the creditor is influenced. A creditor is influenced by the humble solicitations of the debtor; thus, if a creditor, influenced by great submission and the like, say, "henceforward I will exact no interest," then the debt carries no interest. It is the same if the apposition be in the form called *tatpurusha*.

"A fine" (LXXV): *a mulct,* such as the highest amercement and the rest. Although paid after long delay, it carries no interest.

"A nuptial gift" (LXXV) which is promised, or undertaken to be paid. The *Retnácara*.

The commentator considers "promised" as an epithet of "nuptial gift."

"A nuptial gift;" money due on account of marriage. "A sum promised;" undertaken to be paid: and this concerns a thing given on a false *or immoral* consideration, for it is easy to suppose the same grounds for this and for the text of NÁREDA, which has that import (LXXI). The *Chintámeni*.

The commentator considers "promised" as an independent term. Ultimately there is no difference; for, since the donee has no property in a thing promised, there can be no interest. But it may be questioned, why it is said in the *Chintámeni*, "this concerns a thing given on a false *or immoral* consideration." In the gloss of the *Retnácara* also "nuptial gift" assumed as the subject, of which "promised" is the epithet, is liable to objections; for in other cases of things only promised there is no interest. Some expound the text, "a nuptial gift and a sum *only* promised

bear

bear no intereſt." Promiſed; that is, promiſed to be given. It ſhould not be affirmed, that a ſum promiſed as a gift on ſome religious conſideration, muſt be paid with intereſt. It could only be right to affirm it, if there were an expreſs law of ſuch import.

VISHNU alſo declares exemption from intereſt, if a pledge be uſed.

LXXVIII.

VISHNU :—By the uſe of a pledge *to be kept only*, the intereſt is forfeited.

"By the uſe of a pledge;" by the uſe of a pledge to be kept only. The *Retnácara.*

By the uſe of a pledge to be kept only, ſuch as a copper caldron and the like. If a pledge for cuſtody only be uſed a ſingle day, muſt intereſt be paid or not? The anſwer to this queſtion is, it does not follow from the text, that intereſt need not be paid, if the pledge be uſed even a ſingle day; for that would be inconſiſtent with reaſon: and there is no difficulty in explaining the text, "by ſuch uſe of a pledge as is equivalent to the whole intereſt." Conſequently the proportion of intereſt ſhould be ſettled after deducting a ſum equivalent to the uſe of the pledge. This anſwer may be given.

Such being the caſe, if the uſe of the pledge be more *than equal to the principal and intereſt*, would not the principal be forfeited? It may be ſo: and YÁJNYAWALCYA accordingly ſays, "the pledge muſt be releaſed on the double ſum being paid, or having been received from the uſe of a pledge" (XLVI). Elſe, ſince VISHNU propounds the forfeiture of intereſt only by the uſe of a pledge, the principal muſt be paid. With ſo much as has been received, according to the value ſettled by arbitrators for the hire of the pledge, ſuch as the price of milk or the like, or the waſte of copper veſſels, and ſo forth, the intereſt is in the firſt inſtance diſcharged; if there be an exceſs, it is applicable to the liquidation of the principal. This form of adjuſtment ſhould be obſerved in the preſent caſe.

The moderns ſo expound the law. But the *Mitácſhará* ſtates,

that by the uſe of a pledge, however inconſiderable, intereſt is forfeited, however great, becauſe the pledgee has violated the terms of the agreement. The queſtion on the difference of theſe two opinions muſt be determined according to reaſon.

Some money has been intruſted by one man to another, and is delivered by the depoſitary, with or without the conſent of the owner, to another perſon, by way of loan: in that caſe, to whom does intereſt accrue; to the depoſitary, or to the owner? This queſtion will be diſcuſſed in the chapter on Depoſits; but it may be here examined, what is the rule when the depoſitary himſelf uſes the money as a loan.

Is it uſed as a loan with, or without, the aſſent of the owner? If uſed without his aſſent, was it done on the preſumption of aſſent, or without ſuch preſumption? The firſt caſe occurs in the following inſtance: a thing was firſt depoſited with ſome perſon; afterwards the depoſitary, needing a loan for the ſupport of his family, aſks the loan of the depoſitor. In that caſe, the loan authorized by him is alone valid; for, in compariſon with a loan, a bailment, conſiſting in *an agreement for* cuſtody only, is a weaker contract. This may be explained when examining the comparative force of civil contracts. Hence *(ſince the loan prevails over the depoſit)* the principal muſt be repaid with intereſt, unleſs there be a ſpecial agreement to exempt it from intereſt. The ſecond caſe occurs when ſuch a depoſitary needing a loan, and confidently preſuming on the tacit aſſent of the owner, either on account of his indolence, or his remote abſence, publickly executes a written contract of debt, and expends the money. This alſo becomes a debt, but ſecondary *only;* for it is not delivered *as a loan* by the owner: if the firſt method can be obſerved, the laſt ſhould not be practiſed. In the preſent caſe, the principal muſt alſo be repaid with intereſt: if the owner of his own accord relinquiſh intereſt, then only can the principal be repaid without intereſt.

The form of repayment in either caſe is this; what became a debt with the aſſent of the owner, muſt be repaid to the owner himſelf, and intereſt muſt be paid for the intermediate period. If the owner again make it a depoſit, then only does it become a depoſit. But if the owner, when aſſenting to the loan, ſaid, "when you receive money, diſcharge the debt, and keep the

money

money in your poffeffion; my confent is not requifite:" in that cafe, the borrower fhould publickly execute a written declaration of payment, with an acknowledgment of his holding the fum as a depofit, and lodge the money in a place of fafety: from that moment intereft ftops.

But, in the cafe of tacit affent, fuch affent is alfo prefumed when the debt is paid. This is founded on the lefs degree of confidence in the former cafe, and the greater degree of confidence in the laft cafe. If the depofitary faid, when the depofit was made, "I fhall fometimes ufe this as a loan, fometimes lend it to perfons who may afk a loan, fometimes keep it:" in that cafe, whatever the owner may have authorized, fuch only muft be the proceeding *of the depofitary;* for, if the owner faid, "it muft only be lent and repaid with my knowledge," in that cafe it can only be repaid with his affent; and intereft muft be paid until that affent be given. But if he faid, "the loan may be advanced and repaid according to your judgment of what is right; there is no occafion for my *fpecial* confent:" in this cafe, the depofitary may, of his own authority, difcharge the debt, or receive payment from another perfon, to whom the money has been lent. In the interval between the payment of one debt, and the contract for another, intereft is fufpended: fhould the proprietor fubfequently claim intereft until he confented to repayment, he fhall not obtain it. If the owner faid, "it muft not be lent, nor otherwife employed," the depofitary is guilty of an offence if he ufe it as a loan. Should he do fo in breach of fuch an injunction, then intereft at legal rates, to which the depofitary has tacitly affented, muft be paid, until the owner confent to repayment.

The third cafe occurs, when a depofitary expends the money, unknown to the proprietor, and executes no writing declaratory of debt. This is an offence, and fhould be difcuffed under the title of Theft. Although there be no text of any Sage, nor commentary of any Author, on this fubject, it appears fo from the reafon of the thing. Thus,

VRĬHASPATI *, cited in the *Vyavahára tatwa:*—A decifion muft not be made folely by having recourfe

* Book II. Ch. iv. V. 17.

courſe to the letter of written codes; ſince, if no deciſion were made according to the reaſon of the law, or according to immemorial uſage (for the word *yucti* admits both ſenſes), there might be a failure of juſtice.

Yucti; ratiocination. RAGHUNANDANA.

LXXIX.

GÓTAMA:—A loan ſecured by a pledge, *to be kept only, yet* uſed, bears no intereſt, nor money tendered, nor a ſum, *of which part is undelivered by the lender, or* of which he diſturbs the poſſeſſion.

"Money tendered;" the term may ſignify a debtor willing to pay the debt. "Of which he diſturbs the poſſeſſion;" the pledge for which *debt* he attaches in the hands of the creditor. In ſuch a caſe the loan carries no intereſt. For example, a debtor is willing to pay the debt, but the creditor refuſes to accept payment; the debtor depoſits the ſum with a third perſon, and attaches the pledge: in this caſe the loan bears no intereſt; becauſe he has attached the pledge, intereſt ceaſes: but if he attach a pledge which is liable to be uſed, without tendering the debt, intereſt muſt be paid; and not, if he tendered the debt. The text of GÓTAMA ſuggeſts this diſtinction *.

Some explain the text, when the king, on the application of ſome creditor of that creditor, attaches the debt in the hands of the debtor, and makes it as it were a depoſit in his hands, no intereſt ſhall in that caſe be paid. Others ſay the meaning is, when the perſon of the debtor is attached by the creditor to enforce payment of the debt; when he is reſtrained from going where he liſts; when he is confined in priſon, and ſo forth, as ſtated in texts which will be quoted: in ſuch caſes the debt carries no intereſt during the period of reſtraint.

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* A ſubſequent gloſs, more conſiſtent with the literal ſenſe of the text, is followed in the tranſlation.

A loan ſecured by a pledge to be kept only, yet uſed, bears no intereſt. By one who has tendered the money, no intereſt is payable. By a deb or w o is diſturbed in the uſe of the loan received, no intereſt ſhall be paid from the time of diſturbance.

The *Retnácara.*

No intereſt is payable, provided the ſum be depoſited with a third perſon; this muſt be ſupplied, for it coincides with the text of YÁJNYAWALCYA.

"He ſtates another caſe:" that is, when a creditor has granted a loan of a hundred *ſuvernas* depoſited in the hands of a banker, and the whole ſum has not been taken by the debtor, but a few *ſuvernas* only, and the remainder left with the ſame banker; afterwards, the creditor diſcovering his inſolvency, and apprehending that the debt would not be diſcharged, attaches the money in the banker's hands. In ſuch a caſe, the whole ſum carries intereſt until the attachment; but after the attachment, ſo much only as has been received, and not the whole ſum. Or *the other caſe alluded to may be,* when money depoſited ſometimes becomes a loan in the mode above-mentioned, and the creditor in ſuch a caſe attaches *the depoſit, and inſiſts on immediate payment.* Again, a man has lent a horſe or the like to be uſed for burden; after two or three months the creditor, through *other* perſons, forbids the uſe *of the cattle:* it happens that the horſe, or other beaſt, is *only* reſtored two months afterwards. In ſuch a caſe, intereſt muſt be paid until *the uſe of the cattle was* forbidden, but not later; and no hire ſhall be paid for the horſe, ſince he was originally received as a loan. Such is the opinion intimated in the *Retnácara.* According to the gloſs of MISRA, "a loan bears no intereſt, if it be attached, *withheld,* or the like."

Of theſe interpretations one may be conſidered as the true ſenſe of the text, and the reſt as founded on the reaſon of the law. Or all may be conſidered as intended by the text, expounding it equivocally. But, *at all events,* the ſeveral inductions muſt be admitted.

CHAP. III.

ON

PLEDGES, HYPOTHECATION,

AND

MORTGAGES.

SECT. I.—*On the nature of a Pledge, and on Pledges lost or damaged.*

LXXX.

VRĬHASPATI :—A pledge *(ádhi)* is called *bandha*, and is declared to be diviſible into four *pairs :*

2. Moveable, *or perſonal*, and fixed, *or real ;* for cuſtody only, and for uſe ; unlimited, and limited as to time ; with a written contract, and with a verbal atteſted agreement.

Bandha is derived in the paſſive form, " that which is bound *or pledged (badhyatè)*." A male ſlave, or the like, being bound or confined, is then unable to perform ſervice for his maſter ; a horſe alſo, being bound or tied, is then unfit for his owner's uſe. By acceptation, the ſenſe of the word " *bandha* " is a thing remaining in the creditor's poſſeſſion by an agreement on the part of the debtor, in this form, " this *chattel* ſhall remain in thy poſ-

 ſeſſion

ſeſſion ſo long as I do not repay thy money." Accordingly it is ſaid by eminent logicians, *that the meaning of* words *is* apprehended by grammar, by analogy, by dictionaries, by *original* inſtruction, and by practice or acceptation.

"*Adhi* is the very ſame thing with *bandha*. It is diviſible into four *pairs;* it is of four kinds or forms, *which are again ſubdivided.* Thoſe forms are the properties *of a pledge*, conſidered by the author of the *Calpateru* as connected with the nature of the thing *pledged*, the form *of hypothecation*, its period, and *the* evidence *of the tranſaction.* Of how many ſorts again are each of theſe properties *of a pledge?* The Sage, ſatisfying that queſtion, enumerates them; "moveable, &c." (LXXX 2). Conſequently, in regard to its nature, a pledge is of two ſorts; moveable, as kine, horſes, or the like; and fixed, as land, or the like.

Having explained the *diſtinctions on the* nature *of the pledge*, the Sage notices the form: "for cuſtody only, and for uſe;" for cuſtody, or ſafe-guard, and for uſe, or employment. Theſe two direct the propereſt *(pracriſhta)* conduct of the creditor, and hence are called the forms *(pracára) of a pledge:* and thus, in reſpect of form, a pledge is of two kinds. "A pledge for cuſtody only;" to be merely kept: a thing which may be injured by uſe, or one which cannot be uſed. That which is not *probably* injured by uſe, is a pledge "for uſe:" as will be explained further on.

The Sage ſubjoins *the diſtinctions* reſpecting the period of the pledge; "unlimited and limited." "Unlimited;" *literally* ſubject *to redemption* at pleaſure; that is, to be releaſed at no ſpecifick time. "Limited;" to be releaſed at a ſpecifick time. "On payment of the principal at ſuch a time, this *pledge* ſhall be releaſed;" in this and ſimilar forms a period is ſpecified. Thus the diſtinction in reſpect of time is alſo two-fold.

The Sage notices the evidence of a pledge: "with a written contract, and with a verbal atteſted agreement." If it be queſtioned, whether "this horſe be pledged to that man or not," the evidence may be a writing or a witneſs. Thus evidence is alſo two-fold. Hence the diſtinctions are eight-fold, as is obſerved by CHANDÉSWARA.

Being divided into four pairs, moveable or fixed, and ſo forth,

it is of four kinds: four-fold, diſtinguiſhed according to the nature of the thing *pledged*, the form of *hypothecation*, its period, and the evidence of the tranſaction; and eight-fold, by the ſubdiviſion of theſe. The author of the *Calpateru*.

Moveable and fixed compoſe the firſt pair relative to the nature of the thing *pledged;* for cuſtody only, and for uſe, the ſecond pair relative to the form *of hypothecation*; unlimited, and limited *as to time*, the third pair relative to the period *of the mortgage;* with a written contract, and with a verbal atteſted agreement, the fourth pair relative to the evidence *of the tranſaction*. By the ſubdiviſion of theſe, by their mutual differences, by the relative diſtinctions of moveable and fixed, and ſo forth, the ſubject becomes eight-fold; conſequently, each of the four ſorts contains two ſpecies.

The enjoyment of the pledge, and the debtor *himſelf*, and ſo forth, are ſecondary evidence of hypothecation proved by enjoyment, or made by the party himſelf *without writing or atteſtation*. They are not conſequently excluſive of this ſubdiviſion. Or theſe are the diſtinctions of pledge, as approved by law. But a pledge unauthenticated by atteſtation or written contract, or authenticated by an atteſted writing not being noticed in codes of law, is not approved by *poſitive* law. Such is the interpretation according to CHANDESWARA.

Or a pledge, whether moveable or immoveable, is of four ſorts; to be merely kept, to be uſed, redeemable at pleaſure, or at a ſpecified time. This four-fold diſtinction *of pledges* concerns moveable *property*, and *alſo concerns* fixed *property*. A pledge is ſometimes authenticated by a written contract, ſometimes by a verbal atteſted agreement. Such may be the conſtruction *of the text*. This is ſtated generally: ſometimes alſo a pledge is proved by enjoyment, or has been delivered with a verbal unatteſted agreement.

LXXXI.

NÁREDA:—That, to which a *ſecondary* title is given *(adhicriyaté)*, is *(ádhi)* a pledge.

2. It has two forms, to be releaſed at a fixed time, or

or to be retained until payment be tendered. It is again declared to be of two ſorts, for cuſtody only, and for uſe.

3. Even ſo muſt it be diligently kept: on its loſs or deſtruction by the negligence of the lender, the intereſt *on his loan* is forfeited; and even if it be only ſpoiled or altered.

It has two characters or forms. *One*, to be releaſed, or given up, at the period which has been fixed or ſettled. For example: *the pledger ſays*, "a loan has been received from you on the mortgage of this land; when twice the amount of the debt has been realized, you muſt ſurrender the mortgage." Or *he ſays*, "a loan is now received by me, and a pledge is given; paying the debt at the cloſe of the year, I will redeem the pledge, elſe this pledge ſhall become your abſolute property." When a time has been ſettled in theſe or other forms, the pledge is "to be releaſed at a fixed time." This has been named, by VRĬHASPATI, a pledge "limited as to time."

The ſenſe of the *other* phraſe completed is, "until the time of payment *tendered;*" until payment be tendered. In the caſe of an agreement in this form, "whenever the debt ſhall be diſcharged, then only ſhall the pledge be releaſed," it is a pledge for no ſpecifick period; and this is named by VRĬHASPATI a pledge "unlimited as to time," or redeemable at pleaſure; for the payment of the debt and ſurrendry of the pledge depend on the will of the party.

"It is again declared to be of two ſorts" (LXXXI 2); the two kinds being ſubdivided, the diſtinction is four fold. But CHANDÉSWARA thus expounds "two forms" (LXXXI 1); a pledge, whether fixed or moveable, is unlimited or limited as to time, *a diſtinction deſcribed by the phraſe* "to be releaſed at a fixed time, or to be retained until payment be tendered;" and it is for cuſtody only, or for uſe: theſe are the two diſtinctions. It muſt alſo be underſtood, that it may be authenticated by a written contract, or by a verbal atteſted agreement.

Thus the texts of VRĬHASPATI and NÁREDA coincide. According to this interpretation, it is proper to expound the phraſe "it

"it is again of two ſorts," with a written contract or with an atteſted verbal agreement. Here the text of NÁREDA is expounded in conformity with the text of VRĬHASPATI; or the text of VRIHASPATI may be expounded in conformity with the text of NÁREDA. Ultimately there is no difference.

"That to which a title is given" (LXXXI 1); that which is made ſimilar to his own abſolute property. In this inſtance there is only a ſecondary title, conſiſting in the cuſtody or occupation of another's property. As that to which a man is entitled is kept or uſed like his own property, ſo is a thing received in the form of a pledge, though it actually belong to another: and the word *ádhi* acquires the ſame meaning with *bandha* from practice and uſe. Or the derivation of the word *ádhi* may be, that in right of which *(adhicrĭtya)* a loan is made or the like. It may be any-how underſtood *by ſuppoſing the intervention of ſome term*, as in *the epithet* fawn-waiſted, *where the term expreſſive of ſimilarity is dropped.*

"Even ſo muſt it be kept" or preſerved (LXXXI 3); according to the difference in the forms of pledges. In ſuch form as ſuch things are kept, muſt the pledge be kept. Or, it muſt be kept in the mode of cuſtody, to which the debtor aſſented. "On its loſs or deſtruction," in caſe of its not being preſerved, intereſt is forfeited by the negligence of the lender. Such is the meaning *of the text*. If the pledge "be ſpoiled or altered," if it be broken or the like, the conſequence is the ſame; intereſt is forfeited as in the caſe of loſs or deſtruction. In this interpretation CHANDÉSWARA concurs.

LXXXII.

VISHNU:—By the uſe of a pledge *to be kept only*, the intereſt is forfeited; and the creditor ſhall make good the loſs of a pledge, unleſs it was cauſed by the act of GOD or the king, *and without his fault.*

"By the uſe of a pledge;" *already* expounded by the uſe of a pledge *to be kept only**.

If

* Gloſs on V. lxxviii.

If the loſs of the pledge be cauſed by the act of God, or of the king, without any fault on the part of the creditor, his recovery of the principal and intereſt will be propounded. For example; when a horſe or ox is pledged, and dies of diſeaſe notwithſtanding the beſt medicaments adminiſtered, or is forcibly ſeized by the king, though guarded with the utmoſt diligence, the loſs is cauſed by the act of God, or of the king. But the creditor muſt make good a pledge loſt without ſuch *inevitable neceſſity;* either by payment of its value *in money*, or by delivery of an equivalent *in kind*. But in the caſe of his not making good the pledge, Nárada ordains the forfeiture of the principal (LXXXIII). Such is the gloſs delivered in the *Retnácara*.

LXXXIII.

Nárada:—If a pledge be loſt, *and the creditor do not replace it*, the principal itſelf ſhall be forfeited; unleſs the loſs was cauſed *without his fault*, by the act of God, or of the king.

This caſe of a pledge not made good muſt be underſtood where the pledge is not replaced by an equivalent, and is equal in value to the amount of the principal *debt* together with intereſt. It is alſo proper to apply *the ſame rule* when the creditor, in conſequence of his actual poverty, is unable to pay the exceſs of value, or when the value of the thing cannot be aſcertained.

The forfeiture of the principal, implies the forfeiture of intereſt as well as principal. It would be inconſiſtent with reaſon that the principal ſhould be forfeited, and the intereſt remain due.

LXXXIV.

Yájnyawalcya:—If a pledge for cuſtody only be uſed, there ſhall be no intereſt; nor, if a pledge for uſe be damaged: a pledge ſpoiled, *loſt*, or deſtroyed, unleſs by the act of God or of the king, ſhall be made good *by the creditor* *.

 "Spoiled

* The laſt hemiſtich only is cited in this place; the verſe at large is cited after V. 91. I place it here, becauſe reference is made to it before the latter citation.

"Spoiled *or loſt;*" broken, ſtolen or the like, and become utterly unfit for uſe. "Deſtroyed;" annihilated, or totally loſt. Both theſe pledges muſt be made good by payment of the value, or otherwiſe. The *Retnácara*.

Conſequently the term "deſtroyed" ſignifies dead, burnt, or the like. It may be queſtioned how "ſtolen" can be ſuggeſted by the word loſt *or ſpoiled?* If a thing ſtolen be recovered, it is not loſt; if it be not recovered, it is *totally loſt, or ſimilar to a thing* deſtroyed; but the *intermediate* poſſibility of recovery does not juſtify the conſequence.

The text of NÁREDA (LXXXI 3), as expounded by CHANDÉSWARA, "on the loſs or deſtruction of the pledge intereſt is forfeited," is inconſiſtent with theſe texts. It ſhould not be affirmed, that, under the authority of both texts, the forfeiture of intereſt, and ſatisfaction for the pledge, are both ordained. This would be inconſiſtent with the text of VYÁSA.

LXXXV.

VYÁSA :- If gold, or other *precious* thing, ſhall be pledged, and loſt by the negligence of the receiver, that creditor, on the principal and intereſt of his loan being paid, ſhall be forced to pay the price of the pledge.

Here "receiver" *intends* the receiver of the pledge, or creditor; for the pledge, being in the creditor's poſſeſſion, cannot be loſt by the *immediate* fault of him who received the loan. It may indeed ſometimes happen mediately: for example, the borrower, applying to the lender, with the intent of inducing his acceptance of the terms, conceals the proper food of the cow offered as a pledge, and deſcribes it otherwiſe; the creditor, confiding in his information, lends the money on ſuch a pledge: afterwards miſchief ariſes from change of food. In this and other caſes *the reader* may draw his own inferences. But, in the caſe ſuppoſed, it would be inconſiſtent with reaſon that the creditor ſhould be liable to make good the value of that pledge.

In ſuch caſes, we hold, that the matter muſt be ſettled by learned men,

men, difcriminating the faults on both fides. Since no rule is exprefsly declared by Sages, nor any thing particularly ftated by ancient Authors, *the cafe muft be determined* by honeft men of acute fenfe. If any rule on this fubject be declared in books of other countries, they *who affert a fettled rule* have the advantage *in the debate.* Thus, when a pledge is loft, if the creditor do not announce the lofs, he forfeits intereft, and muft make good the the pledge under the authority of the texts of NÁREDA and VISHNU (LXXXI 3 and LXXXII). In this cafe, his concealing the lofs of the pledge is a fault on the part of the creditor, wherefore intereft is forfeited: and this is reafonable; for the creditor concealed the lofs, from a defire of receiving intereft, reflecting, "if the lofs of the pledge were announced, the debtor, borrowing money elfewhere, would pay the debt and demand his pledge; by which my intereft would be forfeited:" concealment therefore was a great offence. But intereft only ftops after the lofs of the pledge; the intereft due before that lofs may be received.

The text of VYÁSA muft be applied to the cafe, where the lofs of the pledge was announced. Confequently, the pledge being loft by the fault of the debtor or of the creditor, and the lofs not being announced by the creditor, intereft is forfeited. But if it be loft by the creditor's fault, and the lofs be announced, he muft pay the value of the pledge, or give an equivalent, and may receive the principal and intereft. In the fame cafe, if he concealed the lofs, he receives the principal without intereft.

Some are of opinion, that the text of NÁREDA, "on the lofs or deftruction of the pledge intereft is forfeited" (LXXXI 3), concerns a pledge to be ufed. For example; when the borrower, receiving the loan, gave as a pledge a boat or the like for ufe; then, fhould the pledge be loft, the creditor forfeits intereft, and the debtor lofes his property: and this is reafonable; for the lofs is imputable to both parties; to the debtor, becaufe he affented to the ufe *of the pledge;* to the creditor, becaufe he did ufe it. Hence the creditor forfeits intereft, and the debtor lofes the thing pledged.

Here it fhould be noticed, that, if the pledge be fpoiled (that is, broken or the like) in confequence of ufe, then only fhould this rule be applied: for, if a pledge be ufed, which fhould only

have

have been kept, the whole intereſt is forfeited; if it be ſpoiled, the principal is forfeited: if a pledge, liable to be uſed, be actually uſed, half the intereſt is forfeited; if it be ſpoiled, the whole intereſt is forfeited. This is accurate. However, this rule concerns only a pledge for uſe with *the* aſſent *of the pledger*. If the pledger have not aſſented to its uſe, the ſame rule ſhould be underſtood, which is directed in the caſe of a pledge for cuſtody only.

"The uſe of a pledge," in the text of VISHNU (LXXXII), being expounded by CHANDÉSWARA, the uſe of a pledge to be kept only, it is proper to infer the loſs of a pledge for cuſtody only, in the phraſe, "the creditor ſhall make good the loſs of a pledge." VYÁSA, ſpecifying "gold or other precious thing," evidently intends a pledge for cuſtody only. YÁJNYAWALCYA (LXXXIV), ordaining the forfeiture of intereſt if a pledge for uſe be broken or the like, adds, "a pledge ſpoiled muſt be made good;" that is, if a pledge for cuſtody only be broken or the like, an equivalent muſt be given. There is no impediment to this induction. Conſequently the text of NÁREDA, "if a pledge be loſt, the principal itſelf is forfeited" (LXXXIII), coinciding with the texts of other Sages, may be well expounded, "if a pledge for cuſtody only be loſt." Or if "loſt or deſtroyed" be explained abſolutely loſt, or totally deſtroyed by mortality, fire or the like, this may be underſtood of a pledge to be uſed: accordingly YÁJNYAWALCYA, having ordained, with a view to pledges for cuſtody, that a pledge ſpoiled ſhall be made good, directs a pledge deſtroyed to be made good, as a rule concerning pledges for uſe. But this alſo concerns pledges for cuſtody; and thus the *true* ſenſe of the expreſſion, "a pledge ſpoiled ſhall be made good," is obtained. This they hold reaſonable.

Others ſay, if a pledge for uſe be ſpoiled or rendered unfit for its purpoſes, intereſt is forfeited: the authorities are the texts above cited "on the loſs of a pledge intereſt is forfeited" (LXXXI 3), and "there ſhall be no intereſt if a pledge for uſe be damaged" (LXXXIV). If the pledge be abſolutely loſt, being burnt or deſtroyed, an equivalent muſt be given, or the principal is forfeited: the authorities are *other* texts; "the creditor ſhall make good the loſs of the pledge" (LXXXII); "if a pledge be loſt, the principal itſelf is forfeited" (LXXXIII); "a pledge de-

 ſtroyed

ftroyed fhall be made good" (LXXXIV). If a pledge for cuftody be fpoiled or damaged by the negligence of the pledgee, even without the ufe of it, or if it be damaged by ufe, intereft is forfeited under the text (LXXXI 3), " and even if it be only fpoiled or altered." If it be *utterly* loft and deftroyed, the principal itfelf is forfeited, or an equivalent muft be given, under the text (LXXXVI) " any pledge being wholly fpoiled, the principal debt fhall be loft," and (LXXXIV) " a pledge fpoiled or loft muft be made good."

Here it muft be underftood, that, when the pledge is loft by the fault of both parties, one forfeits intereft, the other lofes the thing pledged. When it is loft by the fault of the creditor alone, it muft be argued, that the creditor fhall make good the pledge or give other fatisfaction according to circumftances. The lofs cannot *eafily* happen by the fault of the debtor alone: however, fhould it any-how happen *by his fault*, the lofs of the thing pledged falls folely on the debtor, as in the cafe of a lofs caufed by the act of GOD or of the king.

LXXXVI.

VRĬHASPATI:—Any pledge being ufed, and wholly fpoiled *by the fault of the pledgee*, the principal debt fhall be loft, if the pledge be of great value in refpect of the debt, and he muft fully fatisfy the pledger.

" Wholly fpoiled;" rendered totally unfit for ufe. " If the pledge be of great value," in refpect of the fum due *to the creditor*. The *Retnácara*.

According to the laft-mentioned opinion, this concerns only a pledge for cuftody. But, according to the former opinion, there is no difficulty in referring it to both *forts of pledges*. " In refpect of the fum due to the creditor;" that is, in refpect of the aggregate of principal and intereft; for it would be improper to forfeit the principal while the intereft remained *due*.

" He muft fully fatisfy the pledger," by humble fupplication and the like. If he be not fo fatisfied, the pledgee muft pay a

 fum

ſum not exceeding the value of the pledge. Under this law, if clothes, ornaments or the like, received in pawn, be wholly ſpoiled by the wear of them or otherwiſe, ſhould their value be equalled by the amount of principal and intereſt, then the principal and intereſt ſhall be forfeited; if their value be not equalled by the principal and intereſt, the value muſt be made good. When clothes worth ten *ſuvernas* have been pledged for a debt of four *ſuvernas*, in conſequence of the lender's obduracy, through the ignorance of the borrower or his want of any other effects, in ſuch a caſe it is underſtood that the value cannot be made good out of the principal and intereſt.

MISRA expounds the text of VRĬHASPATI (LXXXVI) as intending a debt free of intereſt.

LXXXVII.

MENU:—A pledge muſt not be uſed by force, *that is, againſt conſent:* the pawnee ſo uſing it muſt give up his whole intereſt, or muſt ſatisfy the pawner *if it be ſpoiled or worn out,* by paying him the original price of it; otherwiſe, he commits a theft of the pawn.

This text concerns pledges for cuſtody only: a pledge to be kept only, ſuch as clothes, ornaments or the like, muſt not be uſed. The pawnee, ſo uſing it, muſt give up his whole intereſt, or muſt ſatisfy the pawner; that is, if the pledge be worn out by uſe, he muſt ſatisfy the owner, by paying the value which the pledge bore when it was well conditioned; otherwiſe, he would be guilty of ſtealing the pawn. CULLÚCABHATTA.

The text of VRĬHASPATI alſo (LXXXVI) has the ſame import; for that and the text of VISHNU (LXXXII) are expounded, "if the value of the pledge cannot be made good out of the principal debt, the pledgee muſt pay the exceſs, or give an equivalent."

LXXXVIII.

MENU:—The fool, who ſecretly uſes a pledge without,

out, *though not againſt*, the aſſent of the owner, ſhall give up half of his intereſt as a compenſation for ſuch uſe.

The fool, who, in breach of his agreement with the owner, uſes by ſtealth effects which ſhould only be kept, and which were not delivered for intereſt *by enjoyment*, muſt relinquiſh half his intereſt to requite the uſe of *the pawn*. But, if he uſe the pledge by force, he muſt relinquiſh the whole intereſt (LXXXVII).

CULLÚCABHATTA.

It is therefore held by CULLÚCABHATTA, that, if a pledge for cuſtody only be uſed by ſtealth, half the intereſt ſhould be relinquiſhed; but if uſed by force, the whole intereſt ſhould be relinquiſhed. A ſimilar gloſs is delivered by CHANDÉSWARA, *but* he does not ſpecify *whether the text ſingly intend* the uſe of a pledge for cuſtody or of a pledge for uſe, or *intend the uſe* of each. He adds to the gloſs on the laſt hemiſtich of the laſt verſe, "but if the pledgee do not give up the intereſt, he muſt ſatisfy the debtor by *paying* the computed value of ſuch uſe." Thus arbitrators tell the creditor who has uſed a pledge without authority, "thou muſt give up intereſt." In that caſe, if the creditor refuſe to give up intereſt, the value of uſufruct ſhould be aſſeſſed and deducted from the amount of principal and intereſt. The ſame form ſhould alſo be obſerved in the caſe where half the intereſt ought to be given up.

But VÁCHESPATI MISRA ſays, in every caſe where the pledge is uſed againſt the will of the owner, the whole intereſt is forfeited; when a ſlave or the like, being pledged, is reaſonably employed, half the intereſt; but if a pledge for cuſtody be uſed, the whole intereſt ſhall be forfeited.

LXXXIX.

CÁTYÁYANA:—He who employs on work an unwilling *ſlave or other living* pledge without the aſſent *of the owner*, ſhall be compelled to pay the value of the work, or ſhall receive no intereſt on his loan.

According to all opinions, this text does not ſolely concern a pledge for cuſtody; for it ſtates employment on work, and the unwillingneſs *of the living pledge; but* a pledge for cuſtody cannot be willing, nor can it perform work. The text concerns both a pledge for cuſtody, and a pledge for uſe. The ſenſe of the text is, "he who employs in labour, without the aſſent of the owner, a pledged ſlave or the like, who is unwilling to work, ſhall be compelled to pay the value of his labour, or ſhall receive no intereſt." The *Retnácara.*

According to MISRA the interpretation is the ſame. "The value of the work;" whatever is the juſt hire for the work performed by the ſlave, or whatever has been gained through his labour. It may alſo be underſtood of the hire of boats or the like: but in this caſe employment on work is figurative. Although "unwilling" be a ſuperfluous term in reſpect of boats and the like, ſince it is only ſignificant in reſpect of ſlaves and the reſt, there is no objection *to a comprehenſive interpretation.*

If a debtor, through anxiety for *the celebration of* a feſtival, or through generoſity, aſſent to the uſe of the pledge, and *alſo* ſtipulate other intereſt, in that caſe there is no forfeiture of intereſt: to make this evident it is ſaid, "without the aſſent of the owner." If a ſlave, *whoſe employment is* not authorized, be unwilling to work, *and be neverthel eſs employed,* intereſt is forfeited; therefore the Sage adds, "unwilling." Conſequently, if a ſlave be employed without his own conſent, and without permiſſion from his maſter, the pledgee muſt give up his whole intereſt; with the ſlave's conſent, but without his maſter's permiſſion, half the intereſt (for this coincides with the text of MENU LXXXVIII); with the maſter's permiſſion, but againſt the ſlave's will, alſo half the intereſt: elſe, "unwilling," in this text, would be inſignificant.

This text may, *however,* be reſtricted to pledges for cuſtody only. Thus the verb "do" ſignifies act or tranſact, as it is explained by thoſe who are converſant *with law;* "work," employment *or uſe of* a copper caldron or the like to hold or boil rice. He who ſo uſes ſuch a veſſel, is meant *by the text.* "Without the aſſent *of the owner,*" as before explained. "Unwilling;" concerning which *pledge* it is not the will or intention *of the owner* that the creditor ſhould benefit by the uſe of that caldron.

caldron. Such will *or intention* is prefumed, when the owner, feeing or hearing of the ufe of the pledge, manifefts no difplea-fure. It fhould not be objected, that *the phrafe*, " without the affent *of the owner*," becomes unmeaning. Although it were againft his wifh, he may confent through favour or the like.

When a flave, a cow, or the like, has been pledged, and intereft has been feparately ftipulated, food muft be fupplied by the pledger alone. In fuch a cafe, if the creditor through tendernefs fupply their food, he fhall receive intereft, even though he employ them on work. If the debtor furnifh food, but the flave perform with good humour fome trifling work for the creditor, there is no forfeiture of intereft. When fuch a contract is made, it muft be attributed to the anxiety of the debtor for *the celebration of* fome feftival, *wherefore he fubmits to fuch terms.*

From the expreffion " without affent," in the text of CÁTYÁYANA, *it is inferred, that*, fhould a flave be employed even with his own confent, but without the fanction of his mafter, half the intereft is forfeited; if he be compelled by force, the whole intereft is forfeited. But, fhould a pledge for cuftody be ufed without the affent of the owner, the whole intereft is forfeited, even though no force be employed; as is fuggefted by the term " for cuftody only," in the text, " if a pledge for cuftody only be ufed, there fhall be no intereft" (LXXXIV). This interpretation, confiftent with the glofs of MISRA, is beft. However, fhould the owner confent to the ufe of a pledge, which *regularly* ought to be kept only, and ftipulate other intereft, there is no forfeiture.

If the pledgee maltreat a flave unwilling to work, he fhall be fined.

XC.

CÁTYÁYANA:—But he who with words, or with blows ftruck on a fenfible part, infults or pains a pledged *flave or the like* refufing to work, fhall *forfeit the intereft of his loan*, and pay the firft amercement.

This

This text, *from the title, under which it is introduced,* ſhows that he who ſo abuſes his pledge, ſhall receive no intereſt. The firſt amercement is here mentioned incidentally.

The *Retnácara.*

Since this text is inſerted under the head of Forfeited Intereſt, the loſs of intereſt is implied. The amount of the firſt amercement and other fines has been variouſly ſtated by MENU, NÁREDA and others; and it ſhould be regulated, in the title of Fines, according to the degree of the offence. The ſenſe of the text is this: "he who hurts a ſlave, or other *living* pledge, with blows of a ſtaff or ſtick ſtruck on a noble part, or who menaces him, ſhall pay as a fine the firſt amercement, and of courſe ſhall receive no intereſt." The word "ſtaff" is uſed generally, intending any *inſtrument for inflicting* corporal pain.

Does this text concern a ſlave or other ſimilar pledge employed without the aſſent *of the owner*, or univerſally any ſlave or other living pledge? If it be ſaid, the firſt alone is ſuitable; for, when the employment of a ſlave or the like has been authorized by the owner, he may be taſked by the creditor as *if he were* his own ſlave; ſhould he refuſe to work, proper chaſtiſement may be inflicted; and this is conſiſtent with reaſon; the text is therefore properly referred to the unauthorized uſe "*of a pledged ſlave:*" that is denied; for he ſhould only be bidden to work, although his employment have been authorized. The ſlave of another, who has amicably authorized his employment, ſhould not be beaten: even though the uſufruct were aſſigned in lieu of intereſt, the pledgee ſhould only tell the owner, "your ſlave does not perform my work, you muſt aſſign other intereſt:" on this information the owner muſt do what is proper; if the creditor act otherwiſe, he incurs a fine. The laſt ſuppoſition is alone right. Accordingly it is ſaid in the *Retnácara*, "this text, from the title under which it is introduced, ſhows that no intereſt ſhall be received." On any other conſtruction, the forfeiture of intereſt is *already* ſuggeſted by *another text* (LXXXIX), and it would be therefore improper to eſtabliſh an implied ſenſe of this text.

MENU ordains that no intereſt ſhall be received even in the caſe of uſing a pledge which *regularly* may be uſed.

XCI.*

Menu :—If he take a beneficial pledge, *or a pledge to be uſed for his profit*, he muſt have no *other* intereſt on the loan.

If land, a cow, a ſlave, or the like, be delivered as a pledge to be uſed, the creditor ſhall not receive the intereſt already ordained on loans of money. Cullúcabhatta.

By this phraſe, " land, a cow, a ſlave, or the like," the reference to pledges, which *regularly* may be uſed, is made evident. It might be proper to ſay, " land, cows, ſlaves, gold or the like ;" for all concur in the forfeiture of intereſt, if a pledge be uſed, which ought only to have been kept. By the expreſſion, " delivered as a pledge to be uſed," a loan bearing *that* intereſt, which conſiſts in the uſufruct *of the pledge*, is intimated. To remove the inconſiſtency of denying intereſt, the Sage adds " on the loan ;" meaning no ſuch intereſt as previouſly ordained by Menu in the form of *pecuniary* intereſt on loans at the rate of an eightieth part and ſo forth. Cullúcabhatta expreſſes the ſame in his gloſs, " already ordained." Conſequently, if the uſe of the pledge have been ſettled by way of intereſt, no other intereſt ſhall be received.

But Chandéswara expounds " beneficial " *actually* uſed. Having explained this text as denying intereſt generally, he cites, as a ſpecial rule, the text (LXXXVIII), which ordains the relinquiſhment of half the intereſt, " if a pledge be uſed without, but not againſt, the aſſent of the owner," prefacing *the text with the word* " ſo." Again premiſing " ſo," he cites the text of Menu (LXXXVII), and expounds it as ordaining, that, if a pledge be uſed by force, though its uſe be forbidden, the whole intereſt muſt be given up. Conſequently there is no difficulty in referring theſe three texts to pledges for cuſtody only. In this caſe the text *laſt quoted* (XCI) concerns a pledge of which the uſe has been ſtipulated, and ſo forth, *being intended* to prohibit intereſt according to circumſtances. It ſhould not be objected, ſince the uſe and profit of the pledge is *received as* intereſt, how is

* See V, 117.

is intereſt to be relinquiſhed? If the pledge be uſed, half the intereſt, (that is, half of the legal or of the ſtipulated intereſt) muſt be given up, becauſe *the uſe of the pledge was* not ſettled in lieu of intereſt. YÁJNYAWALCYA (LXXXIV) ordains the forfeiture of the whole intereſt, in every caſe where a pledge for cuſtody only is uſed.

If a pledge to be kept only, as clothes, ornaments, or the like, be uſed, there ſhall be no intereſt; *nor* if a beneficial pledge, as an ox or the like, be rendered unfit for uſe. The *Dípacalicá*.

That is, if it be rendered unfit for uſe, there ſhall be no intereſt. A ſimilar gloſs is delivered in the *Retnácara*. But if a pledge, which *regularly* may be uſed, be *actually* uſed, ſince the relinquiſhment of half the intereſt is ordained, the *univerſal* prohibition of intereſt is unfit. As for a pledge to be kept only, if that pledge be uſed, the forfeiture of intereſt muſt be regulated in due proportion. For inſtance, both the value of the uſufruct and the amount of intereſt ſhould be aſcertained and compared; as has been mentioned under the head of Prohibited Intereſt.

By the uſe of a pledge, however inconſiderable *the value of its uſufruct may be*, the intereſt is forfeited, however great *its amount*; becauſe the pledgee has violated the terms of the agreement.

The author of the *Mitácſhará*.

"Terms of the agreement:" the bargain: a pledge delivered for uſe being a pledge to be uſed, and a pledge delivered for cuſtody only being a pledge to be kept.

But MISRA ſays, forfeiture of intereſt, if a pledge for cuſtody only be uſed, is one rule; forfeiture of intereſt on the *unauthorized* uſe of a pledge which *regularly* might be uſed, is another rule; and forfeiture of intereſt if the pledge be damaged, is again another rule. The meaning has been already explained. The meaning of the ſecond rule is, that half the intereſt is forfeited by the unauthorized uſe of a pledge, which *regularly* might be uſed; and the whole intereſt by the uſe of ſuch a pledge, if the profit were aſſigned in lieu of intereſt, or if it be uſed againſt the conſent of the owner.

XCII.

VRĬHASPATI: — If the creditor, through avarice, uſe

ufe a pledge before intereft ceafe on the loan, or before the ftipulated period expire, the debt fhall bear no further intereft.

2. Like a depofit, the pledge muft be carefully kept; intereft is forfeited if it be damaged.

If it be agreed that a pledge fhall be ufed at a fpecified time, it muft not be ufed while the period is incomplete. This is declared *by the text*. The *Retnácara*.

For example; a borrower receives a loan on the fecurity of a pledge, and makes an agreement in this form: "this pledge fhall remain in your poffeffion, if I do not difcharge the debt at the expiration of five years, the pledge fhall be enjoyed by you:" and the borrower pays intereft independent thereof. In this cafe the ufe of the pledge before the ftipulated period is unauthorized; it fhould not be taken. But when the period has expired, then only fhall the pledge be ufed; and intereft is not thereby forfeited. If the debt were contracted with an agreement, "I will redeem the pledge when the principal is doubled;" then if the pledge be not redeemed although the debt be doubled, the pledge may be ufed after notice given to the debtor's kinfman. In that cafe alfo there is no further intereft (CXIX).

This ufe of a pledge is legal: but how can amicable enjoyment *of a pledge* which *it* is in the debtor's power *to forbid*, be juftified by law? If a creditor ufe a pledge without the affent of the owner, before the ftipulated period expire, and before intereft ceafe on the debt, he forfeits the intereft previoufly agreed on, and which had not been paid. But if the intereft have been paid, a deduction muft be made from the principal. This is deduced from the text of CÁTYÁYANA (LXXXIX), and from common fenfe. If the owner, when the debt is contracted, amicably confent to the ufe of the pledge, intereft is not forfeited: this is reafonable.

Does the text of VRĬHASPATI (XCII) concern a pledge to be ufed, or a pledge to be kept only, or both? On the firft fuppofition it would be wrong to fay, that a pledge for cuftody may not be ufed when intereft has ceafed *on becoming equal to the principal*, and when the ftipulated period has expired; for the ufe of

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a pledge given for cuſtody is authorized after the debt is doubled (CXXI 2.) On the ſecond ſuppoſition, what is the rule in reſpect of a pledge for uſe? If it may be uſed from the date of hypothecation, there is a contradiction to reaſon in *allowing both* the uſe of a pledge and the receipt of intereſt independent thereof. If it may not be uſed, even when the period has expired and the debt has ceaſed to bear intereſt, it is inconſiſtent with reaſon that a pledge for cuſtody may be uſed, but a pledge for uſe may not be uſed. On the third ſuppoſition, the diſtinction of pledges for cuſtody and for uſe would be fruitleſs.

To this it is anſwered, the text concerns both; but the diſtinction has its uſe. The unauthorized uſe of a pledge for cuſtody only, even though not *expreſsly* forbidden *by the owner*, induces a forfeiture of intereſt (LXXXIV). If an employable pledge be uſed without the conſent of the owner, half the intereſt is forfeited; but againſt his conſent, the whole intereſt (LXXXVII and LXXXVIII). A pledge for cuſtody only (LXXXIV) ſignifies a pledge not delivered for uſe, and unlimited as to time. Such is the opinion of VÁCHESPATI MISRA. But, according to CULLÚCABHATTA, the ſame muſt be affirmed of a pledge for cuſtody which is affirmed of a pledge for uſe; elſe it is a diſparagement to him that he has not diſtinguiſhed them.

If a pledge for uſe or cuſtody be ſpoiled or altered, the intereſt is forfeited (LXXXI 3); if it be loſt or deſtroyed, the principal itſelf and the intereſt are forfeited (LXXXIII, LXXXI 3, LXXXVII and LXXXVI); for the term uſed in the text (LXXXI 3) is explained in the *Retnácara*, "on the loſs or deſtruction of the pledge by the fault of the lender." It is ordained in the rule of VISHNU (LXXXII) and text of YÁJNYAWALCYA (LXXXIV), that the loſs of a pledge muſt be made good. An alternative is *thus* ſtated, the delivery of an equivalent in lieu of the pledge, or the forfeiture of principal and intereſt. A third caſe is ſtated; payment of the *pecuniary* value of the pledge (LXXXV.) All this *muſt be explained* according to the fitneſs *of the thing for uſe;* ſince it is virtually the ſame, whether a thing be rendered wholly unfit for uſe, or be totally deſtroyed. But a pledge, though rendered unfit for uſe, becomes the property of the creditor; for that is reaſonable. By the mere uſe

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of a pledge for cuſtody only, intereſt is forfeited, as appears from the term "a pledge for cuſtody" in the text of YAJNYAWALCYA (LXXXIV): but it is proper to aſſert, that intereſt is not forfeited by the authorized uſe of a pledge which *regularly* ſhould only be kept. *In general*, there is no forfeiture of intereſt by the authorized uſe of a pledge which *regularly* may be uſed. Intereſt is forfeited by the employment of a ſlave or the like againſt his will, though authorized by his maſter (LXXXIX). Whether the employment of him be authorized or unauthorized, if an unwilling ſlave be beaten, a fine ſhall be paid (XC). If an employable pledge be uſed without the conſent of the owner, half the intereſt is forfeited (LXXXVIII). If it be uſed againſt his conſent, the whole intereſt is forfeited (LXXXVII).

In the gloſs of CULLÚCABHATTA it is ſtated, that the text concerns a pledge for cuſtody only. His meaning has been already explained. A pledge, whether ſuch as ſhould be kept only or ſuch as may be uſed, muſt not be uſed before the ſtipulated period expire, or before intereſt reach its limit. If it be uſed, intereſt is not valid againſt the price of its uſe. The value of the uſe muſt be diſcharged out of the intereſt due. This is conſiſtent with reaſon. If a pledge, either for cuſtody or for uſe, be rendered partially unfit for uſe, intereſt is forfeited in proportion to the injury and damage (XCII and LXXXIV). By ſtating forfeiture of intereſt in proportion to the injury or damage, the diſparity of forfeiting the whole intereſt for trifling damage is removed. But thoſe who follow the opinion of the author of the *Mitácſhara* muſt affirm, that the whole intereſt is forfeited under the authority of the text, however inconſiderable the damage, as well by the uſe of a pledge to be uſed, as by that of a pledge for cuſtody. This is liable to objections. Others ſay, if the uſe of the pledge be ſtipulated by way of intereſt, there ſhall be no other intereſt (XCI). Otherwiſe, intereſt is allowed at the rate of an eightieth part and ſo forth.

If the loſs be cauſed by the act of GOD or of the king, what ſhould be done? On this point,

XCIII.

VRÍHASPATI ordains:—If a pledge be deſtroyed by the

the act of God or of the king, the creditor ſhall either obtain another pledge, or receive the ſum *lent*, together with intereſt.

" Be deſtroyed;" become altogether unfit for uſe.

The *Retnácara.*

If the debtor cannot immediately diſcharge the debt, he muſt deliver another pledge. If he cannot deliver another pledge, he muſt immediately diſcharge the debt: for without ſupplying the word ' immediately,' the alternative of delivering another pledge or paying the debt would be ineffectual. But if he be utterly unable to do either, the debt is from that period unſecured by pledge *or ſurety;* and the creditor ſhall receive the proper intereſt on ſuch debts.

XCIV.

Vyása:—If the pledge be deſtroyed by the act of God or of the king, no fault is by any means imputable to the creditor; and *immediately* after the loſs of that pledge, the debtor ſhall always be compelled to pay the debt *with intereſt*, or deliver another pledge.

" Shall be compelled to pay the debt;" ' with intereſt' and ' immediately' muſt be ſupplied. The particle has the ſenſe of " or," ſince the text has the ſame import with that of Vrĭhaspati (XCIII).

" Shall be compelled to pay the debt;" ſhall be required to pay the *debt;* for moſt correct ſpeakers admit the cauſal paſſive for certain verbs only, ſuch as go, uſe, know, and the like; and the verb give or pay could not otherwiſe be employed in the cauſal paſſive: it could not be ſaid, the debtor ſhall be compelled to deliver another pledge. The ſame muſt be underſtood alſo in ſubſequent phraſes *of this ſort* uſed by authors.

XCV.

XCV.

NÁREDA:—When a pledge, though *carefully* preferved, is fpoiled in *courfe of* time, another pledge muft be delivered, or the amount *of principal and intereft* muft be paid to the creditor.

"Spoiled;" totally unfit for ufe. "The amount;" the fum borrowed, with intereft: for the purport is the fame with the preceding texts. If a pledged cow or the like in the courfe of time become old, or otherwife *ufelefs*, another pledge muft be delivered.

XCVI.

YÁJNYAWALCYA:—By the acceptance *or actual poffeffion* of a pledge, *the* validity *of the contract* is *maintained*. If it be fpoiled, though carefully kept, another chattel muft be pledged, or the creditor muft receive the amount *of principal and intereft*.

"By the acceptance *alone*;" by *actual* occupancy alone. By acceptance and ufe of a pledge, not by mere indication.

The *Dípacalicá*.

"By ufe;" alluding to a pledge delivered for ufe. This will be explained under the head of the Validity of Pledges.

"By acceptance" of a pledge for ufe or cuftody; by actual poffeffion or enjoyment, the hypothecation is rendered complete; not by the mere atteftation or execution of a written contract and the like. The *Retnácara*.

XCVII.

CÁTYÁYANA:—When a pledge becomes unfit for ufe, or perifhes, without any fault on the part of the

the creditor, the debtor ſhall be compelled to deliver another pledge; *for*, he is not exonerated from the debt.

When a pledge becomes unfit for uſe, or periſhes, provided that detriment or deſtruction be not cauſed by any fault on the part of the creditor, the debtor ſhall be compelled to deliver another pledge: in this caſe, the debt is not cancelled by the mere loſs of the pledge. The Sage makes that evident. "Becauſe" ſhould be ſupplied. Becauſe the debtor is not in ſuch a caſe exonerated from the debt, therefore, another pledge muſt be delivered, or payment be made. A ſimilar gloſs is delivered in the *Retnácara*.

As for what ſome affirm, that if a pledged cow or the like die by accident, the creditor's money and the pledger's property are loſt, that is only founded on approved uſage, not inconſiſtent with divine law. The *Retnácara*.

A ſimilar remark is made in the *Chintámeni*, and by BHAVADÉVA and others. The meaning is, that the creditor's loſs, when a pledge is deſtroyed without any fault on his part, is not confirmed by any Sage. But local uſage on this point ſhould not be aboliſhed.

XCVIII.

The *Vámena purána*, cited by the modern VÁCHESPATI and by RAGHUNANDANA:—A man ſhould not neglect the approved cuſtoms of diſtricts, the equitable rules of his family, or the *particular* laws of his race.

XCIX.

In whatever country, whatever uſage has paſſed through ſucceſſive generations, let not a man there diſregard it; ſuch *uſage* is law in that country.

Here it ſhould be remarked, that if ſome *Bráhmana* have bor-

rowed

rowed money on a mortgage of his land ſituated near a river, and that land be afterwards waſhed away by the river, it is not ſeen in practice, that the creditor's money is loſt. Accordingly it is ſaid in the *Retnácara*, "a pledged cow or the like." This is founded on the following practice: A cow of ſmall value dying, the debtor aſſerts, "he did not give ſufficient attention to her cure;" the creditor affirms, "I gave the propereſt remedies." On this queſtion a deciſion could not be paſſed without minute inveſtigation. Arbitrators, therefore, mediate and determine that the loſs ſhall be borne by both parties. This practice appears to be the ground of the uſage.

From the expreſſion "periſhes" or dies, it is evident that when a pledged cow or the like dies, and from the expreſſion "becomes unfit for uſe," that when it becomes totally unſerviceable, the debtor ſhall be compelled to deliver another pledge. Although a copper caldron or the like, and land or other *immoveable property*, cannot die, yet, as its total deſtruction is ſimilar to *the* death *of an animal*, the ſame rule ſhould be underſtood; for, although it be not expreſsly ſtated in the texts of VYÁSA and others, ſuch is the import of the texts. As the principal is forfeited when the deſtruction of a pledge is cauſed by the fault of the creditor, becauſe it is *in effect* the ſame with ſuch a pledge vitiated; ſo, in this caſe alſo, another pledge muſt be given, becauſe both are *in effect* the ſame. This may be inferred from reaſoning.

Why is "deſtroyed," in the text of VRĬHASPATI (XCIII), expounded 'rendered totally unfit for uſe?' The anſwer is, to ſhow that another pledge muſt alſo be given, if the pledge be rendered totally unfit for uſe. If it be not deſtroyed by the creditor's fault, from what cauſe does the loſs happen? It muſt be underſtood that the loſs happens by the act of GOD, or of the king; for the purport is the ſame with the text of VYÁSA (XCIV), and with the text of VRĬHASPATI (XCIII).

The act of the king is *meant of* pillage by an army, and the like; the act of GOD *intends* the fall of a thunderbolt, or the like: and this generally; comprehending the act of an enemy, the conflagration of a houſe or the like, the depredations of robbers and ſo forth. On this and other points the reader himſelf muſt deduce juſt inferences from reaſoning. The *Retnácara*.

C.

Yájnyawalcya :—Mortgaged land being carried away by a rapid ſtream, or being ſeized by the king, another pledge *of land* muſt be delivered, or the ſum lent muſt be reſtored to the lender.

This text is applicable to the caſe of a pledge deſtroyed or loſt by fracture, theft, combuſtion, or the like.

"Or being ſeized by the king;" *in ſome caſes* it may be legally ſeized by the king, to ſell it for a fine impoſed on the debtor, or becauſe the king has not *actually* given the land which he had declared *an intention of* giving to the debtor, who is a ſoldier, or the like. Illegally it may happen in other caſes alſo.

"Another pledge;" of land muſt be underſtood. If he do not deliver that, the ſum *borrowed* muſt be repaid by the debtor, with intereſt. The *Retnácara.*

"Another;" that is, other than the pledge originally delivered. "A pledge of land;" this is reaſonable: but if other land cannot be delivered, any other pledge may be given. However, if the former pledge were delivered for enjoyment, he muſt now alſo give a pledge adapted to that *purpoſe*. Or, if that cannot be, he muſt give a pledge for confidence only, and pay a ſum equal to the value of the uſufruct of the former pledge, until the debt be diſcharged. But if ſeparate intereſt be paid, and the uſe of the pledge be allowed through complacency, by theſe words, "you may uſe the pledge;" in that caſe the value of uſufruct need not be paid.

It is thus evident, that if mortgaged land be deſtroyed, the loſs falls on the debtor alone. "Land" is an inſtance only, ſuggeſting alſo kine, gold, and the like. "Carried away by a rapid ſtream" is merely illuſtrative of a loſs happening by the act of God; for it has the ſame import with *the following text:*

CI.

Cátyáyana :—Whatever pledge has been loſt by the act of God or the king, the debt, for which it

it was given, ſhall be paid by the debtor to the creditor, with intereſt.

The ſenſe ſuggeſted by this text is, "whatever pledge," whether for cuſtody only, as gold or the like, or for uſe, as land or the like, *has been loſt* "by the act of the king," or of his officers or the like; or by the act of GOD, as carried away by a rapid ſtream, or deſtroyed by fire, &c. Accordingly it is ſaid in the *Retnácara*, "carried away by a rapid ſtream is illuſtrative of a loſs happening by the act of GOD." This text (C) is not quoted in the *Mitácſhará* and *Dípacalicá*.

Creditor and lender ſignifying the ſame, the loſs of the pledge falls on the debtor. This text ordains payment of the debt with intereſt; there is not conſequently a *needleſs* repetition of the former text (XCVII). However, "loſt" is merely an inſtance of ſpoiled, and ſo forth; for the text coincides with that of NÁREDA.

SECT. II.—*On the Redemption of Pledges.*

When the debtor, tendering the ſum due, claims the releaſe of the pledge, what ſhould be done by the creditor? A ſmall part only being tendered, ſhould it be accepted? or ſhould the whole amount of the debt *be alone accepted?* As to the firſt ſuppoſition,

CII.

VRĬHASPATI ordains:—The whole amount due to the pledgee not being paid, he ſhall on no account be compelled to reſtore the pledge againſt his will, *nor ſhall it be obtained from him* by deceit or confinement.

"The pledgee;" in the ſixth caſe, but with a dative ſenſe; to him who has received the pledge, namely, to the creditor. If the whole amount of principal and intereſt be not paid to the creditor,

creditor, he ſhall not be compelled by the king to reſtore the pledge againſt his will. A pledge muſt therefore be releaſed by the creditor, on receipt of the entire ſum *due*, not on receipt of a part only. If the greater part of the whole debt have been diſcharged, ſhall the pledge be retained on account of the ſmaller part, or not? In anſwer to this queſtion, the preſent text is propounded. The Sage adds, he ſhall not be forced to reſtore it by *legal* deceit, or any other of the modes of recovery.

"By deceit or confinement;" the firſt term is explained by ſome, deceit or fraud. "Confinement;" ſitting conſtantly at his gate, or the like, as will be explained. The word "or" is indefinite, alſo ſuggeſting a law-ſuit and the like. It ſhould not be objected, that, from the terms of the definition of *lawful* confinement (CCXXXIX), its acceptation is reſtricted to payment obtained from a debtor. Such a definition, being merely explanatory, is not reſtrictive.

Again, when a debtor, having delivered a pledge of great value to the creditor, and repenting thereof, wiſhes to exchange it for one of leſs value, then alſo the exchange muſt depend on the conſent of the creditor. This muſt be underſtood from parity of reaſoning, as is obſerved in the *Retnácara*; 'when the whole ſum due and ſecured by the pledge is paid to the creditor, who holds that pledge, then only muſt the pledge be releaſed, however great its value may be.' *The debtor* ſaying, "receive ſome other pledge, and reſtore the coſtly pledge; with the delivery of the other pledge, I will give thee a written contract, or cauſe the delivery to be atteſted:" in this caſe alſo, the king ſhall not force the reſtoration of the pledge by the modes of deceit, confinement, or the like. Nor ſhall the pledge be releaſed on payment of a ſmall part *of the debt* only. "Receive ſome other pledge, &c." is a *ſuppoſed* ſpeech of the debtor. In this caſe alſo, the creditor ſhall not be compelled to reſtore the pledge againſt his will.

A debt has been contracted on the mortgage of a piece of land, meaſuring a *crōſa* in circumference; a part of the debt has been afterwards paid, *but* the land is accidentally carried away by a rapid ſtream: this *text* may be *expounded as* reſtraining a creditor, who in that caſe demands a mortgage of land, meaſuring a *crōſa* in circumference. But the reading is (*chitrēna rachitēna*) by

by painting *or dyeing*, and by manufacture, inftead of *(chitrénâ-charitēna)* by deceit and confinement. Thus, when a pledge of land or the like muft be delivered to a creditor, who had already received a pledge, the debtor fhall not be compelled to deliver a pledge for the whole value, fimilar to the former pledge of valuable land or the like. In what cafe? To this the Sage replies, if the debt be not fully paid; that is, if the whole be not paid, but a part be paid: if a part be paid " by painting or dyeing, or by manufacture." " By dyeing;" by the practice of the art of dyeing filk. " By manufacture;" by the practice of art in the conftruction of a houfe or the like. " Or" is indefinite; and direct payment by the practice of any other art is thereby comprehended in the text. This is a very modern interpretation.

Or the word " its" may be fupplied. Thus, a pledge being loft by the act of GOD, another pledge fhould be given to the creditor who received the former pledge; but, if its amount or value have been made good by the debtor himfelf in the practice of fome art, as dyeing or the like above-mentioned, the debtor fhall not be compelled by the king, againft his will, to deliver a pledge for the whole value, that is, a frefh pledge of great value. It is not affirmed, that fuch delivery is requifite. Confequently, the original pledge being loft, and the debtor being unable to give another pledge of the fame nature, or otherwife make good its value, a pledge of great price has, in the mean time, been delivered; the intermediate valuable pledge muft be reftored by the creditor to the debtor, who claims redemption of that pledge, having afterwards made good the value of the original pledge, by the practice of his art.

This is general. The debtor immediately pays fome part of the value of the former pledge, and will deliver another pledge at a future time; to give confidence therein, he delivers a writing or atteftation: in that cafe alfo the rule is the fame. This other expofition follows the glofs of CHANDÉSWARA. But on this conftruction, ' by painting *or dyeing*, or by manufacture, the amount being *partly, though* not fully paid, *he fhall not be compelled to deliver a pledge for* the whole *value*" *(fwadattē'c'hilam**, inftead

* I tranflate it " not well or fully paid," inftead of, " paid by *the man* himfelf." The term is expounded both ways in preceding paragraphs; but why fhould a new pledge of lefs value be given, if the debt have in the mean time been paid? T.

ſtead of *adattê'rt'hê'c'hilê)* is exhibited as the proper reading in ſome books. To expatiate would be vain.

On the other reading *(chitrênâcharitêna)* the ſenſe may be the ſame; for the crude verb "*char*" bears the ſenſe of "act," *exhibited* in *its derivative* "*áchára*" uſage or practice, and in other inſtances. In either caſe, ariſing on theſe two interpretations, it muſt be affirmed, that, if the debtor tender payment of a part only *of the debt*, the creditor need not releaſe the pledge; for no law ordains that it ſhall be then releaſed. According to CHANDÉSWARA, another text of VRĬHASPATI (CIII) ordains, that a pledge ſhall only be releaſed when the whole amount *of the debt* has been paid. This will be ſtated hereafter.

Simple men attribute an active ſenſe to the word "pledgee" in the ſixth caſe. Thus the conſtruction is, "the amount, which ſhould be paid by the pledgee or creditor, not being delivered, the debtor ſhall not be compelled by the king, in any of the modes of recovery, by deceit, confinement, and the reſt, to deliver the pledge to the creditor." Conſequently, if the debtor, having executed a contract of hypothecation, has not received the whole loan, although he have demanded it, and has therefore obſtructed the enjoyment of the pledge, this text eſtabliſhes the rule of deciſion on ſuch a caſe. It will be mentioned, that hypothecation is not valid on a writing alone without enjoyment. Theſe interpretations are either founded on the text, or on the reaſon of the law. They ſhould all be admitted.

As to the ſecond queſtion, *(the whole debt being tendered, muſt it be accepted?)* if the debtor have contracted the debt on an agreement, that the pledge, conſiſting of land or the like, ſhall be enjoyed ſo long as the principal ſum remain undiſcharged, but that no intereſt ſhall be paid, independent *of the pledge*; in that caſe, the principal alone *being tendered*, it muſt be accepted. The ſame Sage ordains it.

CIII.

VRĬHASPATI:—When the debtor, tendering the principal ſum, demands the pledge, even then it muſt be releaſed; otherwiſe the creditor is criminal.

This

This concerns a pledge to be ufed for an indefinite period.

The *Retnácara.*

"Otherwife;" that is, if he procraftinate, coveting the enjoyment of the pledge; or if he covet *and demand* other intereft. The following text declares an offence as well in regard to pledges for cuftody as others:

CIV.

YÁJNYAWALCYA:—To the debtor who comes to redeem his pledge, the creditor fhall reftore it, or be punifhed as a thief; and if the creditor be *dead or* abfent, the debtor may pay the debt to his kinfmen, and fhall take back his pledge.

"Who comes to redeem his pledge;" who approaches the creditor, bringing what is due to the creditor, *namely* the principal fum with or without intereft. To him the pledge fhall be reftored by the creditor, after receiving the money from the debtor. Otherwife, if he do not reftore it, he is guilty of ftealing *the pledge; that is, he fhall be punifhed.* CHANDÉSWARA.

If the creditor be dead, or have gone to another country, what muft be done? The Sage replies, "if the creditor be *dead or* abfent, the debtor may pay the money to his kinfmen;" to his fons and the reft; to his heir, or to any perfon charged with the fupport of his family: "and he fhall take back the pledge" from the fons and the reft.

"To his kinfmen;" literally, to his family; that is, to his fons and the reft. The *Retnácara.*

"To his family;" to his fervant or agent.—The *Mitácfhará.*

Should the fon or other *competent* perfon refufe to reftore the pledge, then, by the fame reafoning as before, he is guilty of theft. If any difpute arife concerning the receipt of his property by either party, that muft be determined, and the delivery and receipt made *good.* If a falfe plea be fet up, through avarice, by the creditor, he fhall be punifhed as a thief. If the fon *of the pledgee* fay, "I have not power to accept payment of the debt without my father's confent," what muft be done in fuch a cafe

will

will be mentioned *in its place*. The debtor being *dead or* abſent, if his ſon or other heir come to the creditor, or to his ſon, for the purpoſe of paying the principal ſum with intereſt, then alſo, as before, muſt the pledge be reſtored. Such is the unexceptionable method of CHANDÉSWARA.

To the debtor, who comes to redeem his pledge, it muſt be reſtored by the creditor on receiving the principal and intereſt.

The *Dípacalicá.*

But HELÁYUDHA expounds the firſt half of the text of YÁJNYAWALCYA (CIV) and the text of VRĬHASPATI (CIII), 'having mortgaged a village or the like, on the next day he comes to pay the debt; but the creditor, coveting intereſt, neither accepts payment of the debt, nor relinquiſhes the mortgage; in that caſe, he ſhall be puniſhed as a thief.' Ultimately there is no difference. It is only neceſſary that a pledge be reſtored by the creditor, on receiving from the debtor the amount then due, *namely* the principal ſum with or without intereſt. Or, if the creditor be not at hand, the debt muſt be paid to his ſon or other repreſentative; and from him muſt the pledge be received, as above mentioned. HELÁYUDHA, grounding his gloſs on that of CHANDÉSWARA, has in no reſpect contradicted it.

When land is mortgaged on theſe terms, "this land ſhall be enjoyed by thee to the end of ſuch a period," the land ſhall be enjoyed to the end of that period; the debtor cannot compulſively redeem the pledge on the ſecond day after the debt was contracted: for there is no ſuch ſpecial law, and the texts of VRĬHASPATI and others ordain penalties for other caſes. This appears from the condition, that no definite period have been fixed, as ſtated in the gloſs of CHANDÉSWARA, "this concerns a pledge to be uſed for an indefinite period." By HELÁYUDHA's expreſſion, "on the ſecond day," it is intimated, that a debtor may redeem a pledge by the payment of the principal only on the ſecond day; on the ſubſequent day, or later, he muſt pay the debt with intereſt: but, if the ſtipulated period be unexpired, he cannot redeem the pledge; for that is ſuggeſted by the phraſe, "on the ſecond day," and by the condition, as ſpecified by CHANDÉSWARA, that it be unlimited as to time; and that is not contradicted in the work of HELÁYUDHA.

"The ſecond day" is mentioned, becauſe a pledge may be redeemed

redeemed on the ſecond day by a debtor tendering the principal only without intereſt; muſt not a pledge be alſo releaſed when a debtor tenders the principal with intereſt before the fixed period have expired? No; as it is directed that ſtipulated intereſt exceeding the rates preſcribed by law ſhall be paid when it has been *expreſsly* ſtipulated, ſo the enjoyment of a pledge is reaſonable for ſo long a period as has been *expreſsly* ſtipulated. On this reflection CHANDÉSWARA has ſaid, "a pledge to be uſed for no definite period;" and this muſt be acknowledged even by HELÁYUDHA; for the following text is expounded, "what has not been held to the cloſe of its term."

CV.

VRĬHASPATI:—When a houſe or field mortgaged for uſe has not been held to the cloſe of its term, neither can the debtor obtain his property, nor the creditor obtain the debt *.

However, two caſes have been ſtated by two authors, in which the debt may be diſcharged by payment of the principal only. Such is the difference.

If the creditor be dead or abſent, YÁJNYAWALCYA has ordained, that the pledge may be redeemed by payment of the debt to his ſon or other repreſentative. The ſame *legiſlator* propounds another caſe.

CVI.

YÁJNYAWALCYA:—Or appraiſed at the value it then bears, it may remain with the creditor, exempt from intereſt.

The pledged chattel, then appraiſed by men ſkilful in valuation, may be fixed in the creditor's poſſeſſion, with the atteſtation of witneſſes. Thence forward the principal, though not

* See the gloſs on this text cited again at V. 118.

not paid, carries no intereſt; for the debt is in a manner diſcharged by the appraiſement of the pledge. If the creditor be not at hand, the debtor may redeem the pledge from his ſons or other *repreſentatives*, and pay the debt to them, or he may fix the pledge in the creditor's hands at the value it then bears: the particle "or" intends this alternative.

An alternative is of two ſorts, optional, or regulated by the law. "Optional" may be inſtanced in written contracts and atteſtation; at the option of the creditor the debt may be delivered with a writing or with an atteſtation. "Regulated *by the law*" may be exemplified in *debts* quadrupled or octupled; quadrupled, if the loan conſiſted of cloths or the like; octupled, if clarified butter and the like were lent: and here an alternative ariſes in reſpect of *legal* regulation.

CHANDÉSWARA intends only a regulated caſe. For example; if the creditor be dead, and his ſon or other heir be preſent, the pledge may be redeemed by paying the debt to him only. By parity of reaſoning, the ſame *may be done*, if the creditor reſide in another country, if he be confined by the king, have abſconded through fear of the king or the like, be afflicted with diſeaſe, be inſane or the like. Conſequently, when a competent creditor is abſent, and his ſon or other *repreſentative* is preſent, if the debtor can redeem the pledge from the ſon or other *repreſentative*, and the ſon or repreſentative can accept payment from the debtor, he may redeem the pledge by payment of the debt to that ſon or repreſentative. This is one caſe. But if the ſon or other heir reſide abroad with the creditor; or if the creditor be dead, and his ſon or heir reſide in another country, or be confined by the king, or have abſconded; or if the ſon or heir ſay, "my father, who reſides in another country, knows all the circumſtances, I am totally uninformed;" or if the creditor or debtor diſpute the matter; in *all* theſe caſes the debtor muſt fix the pledge in the hands of the creditor, appraiſed at the value it then bears. This is the ſecond caſe.

If he and his family reſide in another country, how ſhould mortgaged land or the like be fixed in the hands of the creditor? It is anſwered, 'through him who tranſmits the produce of land or the like ſituated in one province, to a creditor reſiding in another province, ſuch a pledge is enjoyed: or, in whatever manner the

the pledge was previoufly poffeffed, even fo it may be fixed in his hands.' But this cafe fuppofes the debtor's wifh to part with the pledge by felling it, or *to redeem it* by borrowing money elfewhere.

Thus, if the creditor be not fo circumftanced that he can reftore the chattel, but the debtor, to fell it, or having borrowed money elfewhere, wifhes to redeem the pledge, what muft be done? For this YÁJNYAWALCYA provides, "or appraifed, it may remain with the creditor." CHANDÉSWARA.

Since the creditor is not prefent and competent, the debtor's wifh cannot be gratified. But, if the debtor have no defire to *redeem the pledge*, by whofe defire fhould the pledge be redeemed? It muft wait the debtor's wifh: and his defire to part with the pledge is ineffectual without fome mode of payment of the debt. It muft therefore wait his fale of the pledge, or his borrowing money elfewhere. This, however, is merely illuftrative; for the fame rule is appofite, if the debtor wifh to redeem the pledge, having obtained money in alms, by commerce, or the like.

Although the pledge cannot be fold to another while the debt remains undifcharged, fince the redemption of the pledge without payment of the debt is denied by the text of VRĬHASPATI (CII), ftill, if he could give confidence to the purchafer by a furety or otherwife, the debtor may have received the price. To fuch a cafe this rule is applicable. The two cafes, as mentioned by YÁJNYAWALCYA, and connected by the word "or" which intends the regulated alternative, muft be underftood only when the creditor is prefent and competent.

In the *Dípacalicá*, 'SÚLAPÁNI obferves, if the pledge for any reafon be not reftored to the debtor, the pledge, appraifed at its then value, may remain in the houfe of the pledgee, exempt from intereft. The expreffion "for any reafon" comprehends other cafes alfo, fuch as that ftated by CHANDÉSWARA. For example: the creditor is prefent and competent *to civil tranfactions*, but the pledge, either gold weighing a hundred *palas*, or a horfe, which had been feen by many perfons, is at the creditor's houfe in another province, and he cannot immediately go thither; or a flave or the like, delivered as a pledge, has gone to another country on bufinefs: in thefe cafes, the pledge fhould

be

be appraised by men conversant with the value of things, after learning, both from the debtor and creditor, that the gold is unmixed with other metals and so forth, or that such is the age or strength of the horse or slave and so forth; and the debtor should fix the pledge in the hands of the pledgee, declaring "the pledge ascertained at such a value by appraisers and witnesses, or certified in writing, shall remain in thy possession." So in other cases also. Ultimately there is no contradiction between those *authors*. However, the appraisement is made in such a case by desire of the creditor or debtor, or both. This exhibits a portion *of the subject*, which CHANDÉSWARA also has treated partially.

But if a period were *stipulated*, the creditor entertains no *such* wish before the period expire; or, if he do, he has no right to the use of the pledge: and interest cannot be forbidden at the will of the debtor. When the period has expired, the debtor's *option* prevails. At his choice the pledge may be redeemed, or a value affixed to it; for, if he do not then redeem it, his property is devested (CXII). But in a case unlimited as to time, the redemption or foreclosure of the mortgage depends solely on the will of the debtor. To expatiate would be vain.

Here the valuation of a pledge only is mentioned, not its sale. In this case, the creditor, returning from abroad, may restore the pledge on receiving so much money *as was due when the pledge was valued*. Herein the *Retnâcara* concurs. The same should be understood in the *proposed* case of a slave, and also in other cases. It should be here observed, that, if the pledged slave or other pawn, having grown old or the like, bears a less value when the creditor, returning from abroad, restores the pledge, than was the value at the time of appraisement, the loss must fall on the creditor alone; for a value was then affixed merely that the principal may bear no further interest. But if the value be enhanced by circumstances of season or the like, the profit does not accrue to the creditor; for YAJNYADATTA has no true property in the value of a chattel belonging to DÉVADATTA. But the loss falling on the creditor is the consequence of his fault in not then restoring the pledge. In this there is nothing incongruous.

If the value of land, or other mortgaged property which is permanent,

permanent, be reduced from the circumſtances of the times or the like, what is the rule? In that caſe alſo the loſs falls on the creditor; ſince the debtor may ſay, "the value is only now reduced in conſequence of a dearth or the like; when I offered to redeem the pledge, it bore a greater value." By ſpecifying "the value it then bears," the Sage intimates generally a *poſſible* loſs falling on the creditor; *he does* not *ſtate* ſpecially, that in ſome inſtances no loſs falls on the creditor. But in fact all this muſt be underſtood of the natural price of commodities: if the debtor, redeeming the pledge from the creditor on his return from abroad, ſell it for a low price through the exigence of his affairs, he is not entitled to recover the difference of price from the creditor; but only when the juſt price *is reduced* by circumſtances of ſeaſon. This ſhould be held reaſonable.

When mortgaged land or the like has been appraiſed, by whom ſhould it be enjoyed? And is a pledged ſlave or the like to be employed or not after the appraiſement? On theſe doubts it is ſaid: the uſe and profit of a pledge is the intereſt on it; intereſt ceaſing, it follows, that the *uſufruct* ceaſes. If the pledge were ſuch as might be uſed *without detriment (for inſtance,* a tree or the like), but if the uſe of it were not authorized, the uſe of it was previouſly unlawful; ſurely now, after the appraiſement, it is *unlawful* as before. The pledge being nevertheleſs uſed in the ſubſequent period, half the benefit muſt be paid to the debtor; but uſed though *expreſsly* forbidden, the whole profit muſt be made good to the debtor. If he aſſent to it, uſufruct muſt be admitted as authorized by him. But the expreſſion of YÁJNYAWALCYA, "may remain with the creditor," has been expounded, may be fixed in the creditor's *poſſeſſion or* enjoyment; ſuppoſing the caſe where the uſufruct is not forbidden. Accordingly 'SÚLAPÁNI has ſaid, 'the pledge may remain in the houſe of the pledgee, exempt from intereſt;' not, 'it may remain in the pledgee's *poſſeſſion or* enjoyment.' Thus may the law be conciſely ſtated.

YÁJNYAWALCYA (XLVI) propounds a form of redemption of a pledge when the creditor is preſent. This *text* concerns the caſe where the thing was pledged on theſe terms, "when the double ſum has been received from the uſe of the pledge, it ſhall be reſtored by thee." That is, provided intereſt were ſtipulated;

elſe

elſe *the pledge muſt be reſtored* on payment of the principal only. This is called in the world a voidable pledge. — The *Retnácara*.

The very ſame import is ſtated in the *Dípacalicá*. It may be thus explained; a pledge delivered on this ſtipulation, "I will redeem this pledge by paying the debt at the cloſe of two years," is a pledge to be releaſed at a ſpecifick term, namely at the term of two years. In like manner, a pledge ſtipulated to be reſtored when twice the amount of the ſum for which it is lodged ſhall be received from the uſe of it, is a pledge to be releaſed on a ſpecifick condition: this is called "a voidable pledge." "Provided intereſt were ſtipulated;" provided it bore intereſt; provided intereſt were agreed on. "Elſe," if no intereſt were ſtipulated, the pledge muſt be releaſed "on payment of the principal only," that is, when the ſingle ſum has been received. Or, if the agreement were in this form, "enjoy the pledge until the principal ſum be paid;" or in this form, "enjoy the pledge until twice the principal ſum be paid" (provided that *in the laſt caſe* the debtor pay intereſt out of other effects); the creditor ſhall enjoy the pledge ſo long as the principal ſum remain undiſcharged.

If the pledge be uſed, *the price of it* muſt alſo be paid.

The *Mitácſhará*.

The value of the uſe muſt be paid to the debtor. Such being the caſe, if the agreement run in this form, "enjoy the pledge until three times the principal be paid," what is the rule in that caſe? Twice the amount of the principal is alone approved by law: hence the ſubſequent uſe of the pledge is improper. If it be alleged, it is not improper, being of the nature of ſtipulated intereſt; the anſwer is, even in the caſe of ſtipulated intereſt the law has not authorized the receipt of more than double the principal paid at once.

CVII.

VISHNU:—That immoveable property, which has been delivered, *reſtorable* when the ſum borrowed is made good, the creditor muſt reſtore when the ſum borrowed has been made good.

There

There is no difficulty in referring this text to a debt exempt from intereſt.

CVIII.

VRĬHASPATI :—When land or other *immoveable property* has been enjoyed, and more *than the principal debt* has accrued therefrom, then, the principal and intereſt having been realized, the debtor ſhall obtain his pledge.

When land or the like has been enjoyed, and by that enjoyment more than the amount of the principal, that is, intereſt, *has been received*, ſurely the principal *ſum* has been obtained: repeating this the Sage propounds the law, "the principal and intereſt *having been realized*," &c. The appoſition is connective. CHANDÉSWARA delivers a ſimilar gloſs. This muſt be underſtood only when it was agreed that the pledge ſhould be reſtored after the principal and intereſt have been realized; for it coincides with the text of YÁJNYAWALCYA, above cited. The ſame *legiſlator* expreſsly declares it.

CIX.

YÁJNYAWALCYA :—When a debtor mortgages land to his creditor, declaring and ſpecifying, "this ſhall be enjoyed by thee, even though intereſt ceaſe *on becoming equal to the principal*;"

2. That pledge ſhall be reſtored to the debtor, whenever the principal and intereſt ſhall have been received. This is declared to be the legal rule concerning pledges for loans on intereſt.

"Specifying;" aſcertaining. "Although intereſt have ceaſed;" although it have reached the limit of intereſt, the pledge ſhall be neverthleſs enjoyed until the principal and intereſt be paid. The *Retnácara*.

If the pledge be delivered with an agreement that it may be ufed even after the period in which intereft accumulates to its higheft limit, the enjoyment of it is reafonable even after the period in which the higheft intereft accumulates. In anfwer to the queftion, how long may it be ufed? this text particularly ftates, fo long as the principal and intereft are not acquitted by the ufe of the pledge, the creditor may ufe it. The import of the text may be thus ftated on a full confideration of the glofs delivered in the *Retnácara*.

It fhould not be affirmed, that this text concerns only the cafe of a fpecial agreement, and the preceding text (CVIII) the cafe where no fpecial agreement has been made: and thus, if no period have been ftipulated, the creditor muft releafe the pledge when the debt is doubled; but, in the cafe of a fpecial agreement, the pledge fhall be enjoyed until the debt be difcharged, and the text permits the pledge to be fo long enjoyed. The following rule of VíSHNU denies the redemption of the pledge without a fpecial agreement, even though the debt be doubled:

CX.

VISHNU:—Even though the utmoft intereft have accumulated, *the creditor need* not *reftore* an immoveable pledge without a fpecial agreement.

The meaning of the text (CIX) is this: when the debtor delivers a pledge declaring and fpecifying, "this land fhall be enjoyed by thee (the creditor) even though intereft ceafe *on becoming equal to the principal*," (for the intereft has accumulated *to its utmoft limit*, when intereft ceafes;) that pledge *fhall be reftored*, when *the principal has been* received. It is confequently fuggefted, that a pledge may be ufed until the principal fum be difcharged, even though intereft have *regularly* ceafed. Or the text (as fome remark) may be expounded in a different import: when a pledge is delivered with an agreement, that it fhall be enjoyed even though intereft ceafe; in that cafe, when the intereft has been received from the ufe of the pledge, it muft be reftored,

reſtored, if the principal be diſcharged out of other funds; but if not, the pledge may ſtill be retained.

CXI.

YÁJNYAWALCYA:—But a pledge ſhall be enjoyed until actual payment of the debt *.

If a debt amounting to one hundred *ſuvernas* be nearly diſcharged, but five *ſuvernas* remain due, the ſenſe of the text is, *that* ſo long *as that remain unpaid, the pledge ſhall be retained.* No law directs that the half or quarter of the pledge ſhall be reſtored. On the other hand, in the foregoing gloſs on the text cited from VRĬHASPATI (CII), it is not poſitively ordained that it may not be reſtored. But this ſeems a great diſparity. If any particular practice ſubſiſt in certain countries, it ſhould be deemed ſatisfactory. This ſhould be held by the wiſe. In fact, it follows from the condition ſtated in the text of VRĬHASPATI above cited (CII), " againſt his will," that the pledge may be reſtored if the creditor conſent; and ſuch conſent is proper in this caſe, ſince the uſe of a pledge adapted to a large ſum is improper when a ſmall ſum only remains due.

How is the principal or the intereſt liquidated from the uſe of the pledge? The form may be thus ſtated: when arable land has been mortgaged and a debt contracted, in the month of *'Srávana,* the produce being gathered in the month of *Pauſha,* and the intereſt due from *'Srávana* to *Márgaśirſha* † being liquidated from the price of that *produce,* if the amount exceed *the intereſt,* the principal may be liquidated; if it be deficient, payment will be *taken* from the value of the produce obtained in the following year. If it be annually deficient, the pledge may be enjoyed for a longer time than ſix years and eight months, even until the intereſt be fully diſcharged: afterwards, on payment of the principal, the pledge ſhall be delivered up. But when the *exact* amount of intereſt, neither more nor leſs, is obtained from land in the month of *Jyaiſh't'ha,* (the debt being contracted on the mortgage of inhabited ground, *the rent of which is payable in that month,)*

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* See V. 229. † *'Agraháyana.*

month,) a period of thirteen years and four months muſt be completed; in that caſe the debt is diſcharged with intereſt, on receipt of half or a part only of the amount of rent for the current year.

This occurs in the caſe of legal intereſt at the rate of an eightieth part *of the principal*. But the uſe of a pledge until the principal ſum be paid from other funds, occurs in the caſe of intereſt by enjoyment. If the principal be paid in the month of *Jyaiſht'ha*, the rent of the mortgaged ground muſt be received in due proportions by both parties*. As a pledgee may not receive the whole rent in the month of *Pauſha*, when the owner, contracting the debt in the month of *Cártica*, mortgages land which affords *annual* rent in the month of *Pauſha*, but ſhall receive the proportion of rent for two months; ſo, if payment be made after ſome years, in the month of *'Srávana*, he ſhall receive the proportionate rent for ſeven months of the current year; that is, ſeven parts of the whole rent divided into twelve parts. But if he receive the whole rent inadvertently in the month of *Pauſha* of the firſt year, then, deducting a ſum ſufficient to diſcharge the intereſt, the ſurplus ſhould be applied to liquidate the principal. In ſuch circumſtances, the principal being annually diminiſhed, it is fully liquidated in a ſhort period. If the land cannot yield ſo much rent in a ſubſequent year, the debtor muſt make good the ſum from his own funds, in conformity with the agreement. If it produce a ſurplus, that muſt be applied to the liquidation of the principal; and intereſt ſhall not ſubſequently be paid on that *part of the principal*.

Yet if the agreement bore that the pledge ſhall be enjoyed until the principal be paid, the ſame rule prevails in the caſe of a mortgage of inhabited ground; for, ſince rent ſhould be daily receiveable for the occupancy *of the ground*, it is proper that the creditor ſhould receive the rent accruing from the date of the loan. If land or the like be mortgaged, which yields rent on account of the produce, receivable by cuſtom on a day certain, and if the payment be ſettled for the month of *Pauſha*, then, although the whole rent for that year would *otherwiſe* have been received, yet, if the debt be paid in the ſubſequent month of *Márgaśirſha*,

* Becauſe the full amount of intereſt was realized in the eighth month of the ſeventh year.

Mârgaśirsha, it appears from the reaſon of the law, that the creditor ſhall not receive the rent of that year; ſince a day has been ſet for the payment of rent on account of produce, and the land was poſſeſſed by the creditor on that day in the year when the loan was made, but had been redeemed before that day in the year when the debt is paid. Still, however, as an inconſiſtency would occur in practice, becauſe no intereſt would be received when a debt, contracted on the ſecurity of ſuch a mortgage in the month of *Mágha*, was diſcharged in the earlier month of *Mârgaśirsha, in a ſubſequent year*, the matter muſt be otherwiſe regulated, by a diſtribution *of the rent* as before, or by *yielding* the rent of the ſubſequent year.

If a milch cow or the like be pledged for uſe and profit, the intereſt ſhould be liquidated, in conformity with the agreement, from the computed daily profit; and, if poſſible, the principal ſhould be liquidated. This induction has the authority of law. With the conſent of the debtor and creditor, an adjuſtment is formed on a middle valuation ſettled by arbitrators. Such is the current practice.

"The double ſum," in the text of YÁJNYAWALCYA (XLVI), ſuppoſes *a loan of* gold or the like; but if clothes or the like were lent, a treble ſum and ſo forth muſt be underſtood, as ſtated in the ſection on Limits of Intereſt. However, when the agreement was in this or ſimilar forms, "I will reſtore the pledge when the double ſum has been received," the creditor need not reſtore the pledge before the debt has been diſcharged. Thus VISHNU, having premiſed that the creditor muſt reſtore the pledge, ſubjoins the text *above cited* (CX).

Many *ſpecial* agreements may be *made* in reſpect of pledges. Some of theſe ſhall be *now* mentioned. 1. "This land is "mortgaged for a debt of twenty *ſuvernas*; when forty *ſuvernas* "have been realized from the uſe of it, you muſt releaſe the "mortgage." 2. "If I do not redeem the pledge when the "principal has accumulated to forty *ſuvernas*, this ſhall become "thy abſolute property." 3. "The pledge ſhall be enjoyed by "you, until the principal and intereſt have been realized." 4. "If I do not then redeem the pledge, when the principal and "intereſt have been realized, it ſhall become thy abſolute pro-"perty." 5. "The pledge ſhall be enjoyed by you for ten

" years." 6. " The pledge ſhall be releaſed on the receipt of " the principal ſum at the end of three years." 7. " If I do not " redeem the pledge at the expiration of ten yeats, it ſhall be-" come thy abſolute property." 8. " If I do not redeem the " pledge by paying the principal ſum at the expiration of three " years, it ſhall become thy abſolute property." 9. " The " pledge ſhall be enjoyed by thee for three years, I will after-" wards redeem it by paying the principal ſum; if I do not re-" deem it at the expiration of the fifth year, it ſhall become thy " abſolute property." 10. " Enjoy the pledge for ten years, " and you may ſubſequently enjoy it *unleſs I then redeem it;* if I " do not redeem it at the cloſe of the twelfth year, it ſhall be-" come your abſolute property." 11. " This pledge may be " uſed by thee ſo long as intereſt accrues; afterwards, on receipt " of the principal, the pledge muſt be reſtored." 12. " If I do " not then redeem it, the pledge ſhall become thy abſolute " property." 13. " If I do not redeem it within two ſubſe-" quent years, it ſhall become thy abſolute property." 14. " The pledge may be uſed until I pay the principal ſum." 15. " If I do not pay the principal and redeem the pledge, it ſhall " become thy abſolute property."

" Mortgaging this village or the like, I borrow twenty *ſuver-" nas;* from this village thou ſhalt receive intereſt on that ſum " at the rate of an eightieth part *of the principal;* the remainder " ſhall be received by me." Ten forms of this agreement, as above ſtated, make twenty-eight forms*. Again; mortgaging a village or the like, the debtor ſays, " half or a quarter of the produce of this village ſhall be enjoyed by you; the reſt I will take." Since there are alſo ten forms of this agreement, forty modes of agreement have been ſuggeſted. " Accepting this village or the like in pawn, lend twenty *ſuvernas.*" Forty other forms may be ſtated in this mode. " Accept this village in " pawn; from its produce ſupplying the expences incident to " it, give me ten *ſuvernas,* and take the remainder yourſelf." In this mode there may be numerous forms of agreement: and various

* I cannot well correct the obvious error in the numbers: it is unimportant. However, among the fifteen contracts particularized, four, and perhaps the fifth alſo, cannot be accommodated to this caſe of ſpecifick intereſt. We may therefore read twenty-five inſtead of twenty-eight, and correct the ſubſequent numbers by reading fifteen inſtead of ten.

various forms exiſt in fixing the term of the mortgage and ſo forth. To avoid prolixity they are here unnoticed, but they are numerous. The law concerning them may be underſtood by *the* repetition *of the rules delivered reſpecting others.* But a contract for hypothecating *the merit of* ablutions in the *Ganges*, and the like, ſhall be mentioned.

The ſettled law in reſpect of theſe *may be thus ſtated.* Under the firſt agreement, the ſum of forty *ſuvernas* being completed, if the debtor, tendering the principal ſum, offer to redeem the pledge, it muſt be then releaſed. Such is the opinion intimated in the *Retnácara* by the condition ſtated (in the gloſs on the text CIII) "a pledge to be uſed for an indefinite period." It has been already diſcuſſed. But, computing the ſum realized from the uſe of the pledge in the period during which it has been held, and fully liquidating the forty *ſuvernas*, he may redeem the pledge. According to the *Dípacalicá*, if he do not redeem the pledge when forty *ſuvernas* have been realized, it becomes the ſole property of the creditor.

CXII.

YÁJNYAWALCYA:—The pledge is forfeited, if it be not redeemed when the debt is doubled: *ſince it is* pledged for a ſtipulated period, it is forfeited at that period; but a pledge to be uſed *for an unlimited time* is not forfeited.

The debt being doubled, if the debtor do not *then* redeem the pledge, it is forfeited to the creditor. A ſimilar expoſition is delivered in the *Calpateru*. But HELÁYUDHA ſays, 'this text concerns a pledge for cuſtody only:' in which opinion the author of the *Mitácſhará* concurs. Their notion appears to be this: if a beneficial pledge be not redeemed, although twice the principal have been received from its uſe, the creditor ſuſtains no loſs: why then ſhould it be forfeited? But, ſince a pledge for cuſtody is not uſed, why ſhould the creditor long preſerve unprofitably the property of another? The pledge is therefore forfeited by a debtor who has ſtipulated a period for redemption.

Other

Others think, that ſuch reaſoning, which is not authorized by the law, may not be truſted. At the ſtipulated period, whether before or after the principal is doubled, a pledge limited as to time is forfeited, and becomes the property of the creditor: and this concerns the ſeventh form of agreement. According to this opinion, what is the import of the phraſe, "but a pledge to be uſed is not forfeited?" It concerns a pledge delivered for uſe, in the fourteenth form *of agreement*, "the pledge may be uſed until I pay the principal ſum."

But, although it be curſorily intimated that both *pledges* become the ſole property of the creditor whenever the principal is doubled, provided the debt conſiſted in ſhells, whether pledged for uſe or cuſtody; ſtill, as reaſonable practice no-where in the univerſe ſhows the creditor's property without the conſent of the pledger, when braſs or the like has been pledged with a ſpecial agreement, CHANDÉSWARA, therefore, intimating that it is not admiſſible in his opinion, by adding "it muſt be otherwiſe expounded," himſelf propounds the caſe: that is forfeited which has been pledged with a declaration in this form, "if the pledge be not redeemed when the principal is doubled, it ſhall become thy ſole property." Conſequently, the ſecond form only is intended by the expreſſion of YÁJNYAWALCYA, "the pledge is forfeited."

This is founded only on the inconſiſtency of *a different* practice. Thus, under the firſt form of agreement, if the pledge be not redeemed after the double ſum has been realized, a moveable pledge may be uſed, notice being given to the debtor or his family (CXIX). The debtor's property is not then forfeited, for there is no proof *of ſuch forfeiture;* and nothing oppoſes this application of the phraſe, "a pledge to be uſed is not forfeited." But immoveable property ſhould be reſtored when the double ſum has been realized. Such is CHANDÉSWARA's opinion, and that is proper; for the land or other thing which is pledged belongs to the debtor while it remains a pledge, as much as it did before; but he cannot diſpoſe of it at pleaſure, while it is a pledge: how then ſhould the debtor's property be deveſted when the principal is doubled, ſince there is no efficient contract in the nature of gift or ſale? It ſhould not be objected, that, under the authority of the text, the forfeiture of property *in a pledge* unredeemed is

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acknowledged in the *Mitácshará*. That is improper, since it is difficult to deduce a forfeiture not previously stipulated, from a text which may be otherwise expounded. It should be affirmed, that forfeiture of property only takes place *in cases intended* by the text of YÁJNYAWALCYA on Title by Long Possession.

CXIII.

YÁJNYAWALCYA :—He who sees his land possessed by a stranger for twenty years, or his personal estate for ten years, without asserting his own right, loses his property in them.

For YÁJNYAWALCYA, in a subsequent text, declares property not forfeited in certain cases.

CXIV.

YÁJNYAWALCYA : —Except pledges, boundaries, sealed deposits, the wealth of idiots and infants, things amicably lent for use, and the property of a king, a woman, or a priest versed in holy writ *.

This also is subsequently mentioned by CHANDÉSWARA. What is propounded by the Sage (CXII), states the cause; "pledged for a stipulated period, &c." that for which a specifick term was settled, when his own property should be devested, and property should be vested in the creditor, is forfeited at *the expiration of* that term. In whatever case, and in whatever mode, the owner has agreed to the forfeiture of his own property, and the *consequent* property of another, so shall it of course be. The period, in which the principal is doubled, is a specifick term: this also is a stipulated term. Not fearing repetition, *the Sage* has assigned a cause *of forfeiture*. Thus *may the law be* concisely *expounded*.

"A pledge to be used is not forfeited;" a pledge to be used for

* The last hemistich was not cited in this place.

for an unlimited time is not forfeited, even though *unredeemed* for a thouſand years. But if a period be ſtipulated, other texts are found *which provide for that caſe.* The *Retnácara.*

Since there can be no enjoyment of produce from a pledge for cuſtody only, a pledge for uſe is meant. "For an unlimited time;" a pledge for which no time has been ſtipulated, when the owner's property ſhall be deveſted, and property be veſted in the creditor. "But, if a term be ſtipulated;" if a pledge be delivered with a term fixed for annulling his own property, and veſting property in another, other texts of Sages, quoted or unquoted, are found, *which provide for that caſe.* Conſequently, whatever text declares the creditor's property in the pledge, concerns this alone. Even where the principal ſum has been doubled, and the forfeiture of property has been ſtipulated, VRĬHASPATI propounds a legal period *for the equity of redemption.*

CXV.

VRĬHASPATI:—After the time for payment has paſt, and when intereſt ceaſes *on becoming equal to the principal,* the creditor ſhall be owner of the pledge: but the debtor has a right to redeem it before ten days have elapſed.

CXVI.

VYÁSA:—Gold being doubled, and the ſtipulated period having expired, the creditor becomes owner of the pledge after the lapſe of fourteen days.

2. But a pledge to be uſed, of which the term has elapſed, the debtor ſhall *only* recover, on *then* paying, from other funds, the exact amount of the principal.

"After the time for payment has paſt;" when the term, which

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was ſettled in regard to the pledge, is completed. For example, ten years, or the like, in the 7th form of agreement; three years, or the like, in the 8th; five years, or the like, in the 9th; twelve years, or the like, in the 10th; two years after intereſt has been fully liquidated in the 13th; and, even in the 14th form, any time ſubſequent to the payment of the principal ſum: in theſe and ſimilar inſtances the period expires. How can it happen that a man ſhould have paid the principal, and not have redeemed the pledge? It may happen when the principal ſum has been any-how received through the intervention of another, but the debtor, apprehenſive *of puniſhment* on account of ſome offence, has abſconded.

"When intereſt ceaſes;" when the principal is doubled: and this concerns the ſecond form of agreement above mentioned. "After the time for payment has paſt;" in this caſe a term different from the period when intereſt ceaſes ſhould be underſtood, by the ſame rule with the expreſſion "bring the kine and oxen *." The conſtruction of the phraſe is, the creditor ſhall be owner of the pledge.

"Before ten days have elapſed;" does not this concern the caſe, where it is agreed, "if I do not redeem the pledge within ten days after the principal is doubled, it ſhall become thy abſolute property?" This ſhould not be affirmed; for it would be inconſiſtent with practice. When no ſuch agreement is made, the interval of ten days is nevertheleſs required: and that would be inapplicable, when the term was paſt. Such is the mode of interpretation conſiſtent with the gloſs of the *Retnácara*.

The interval of ten days, ordained by VRĬHASPATI, muſt be underſtood of a debtor who reſides at home. But if he do not, VYÁSA propounds the rule (CXVI). "Gold being doubled," has the ſame import with the expreſſion "when intereſt ceaſes." "The ſtipulated period being expired;" when a term has been fixed in regard to the pledge, and that term is paſt. It correſponds with the preceding text. The ſubſequent verſe (CXVI 2) is intended for another diſtinction. "The exact amount;" that is, without intereſt. The *Retnácara*.

Conſequently this concerns the fourth, eighth, and fifteenth forms of agreement.

Here

* Where one term is generick, and the other ſpecifick. T.

Here an obſervation ſhould be made. If the debtor happen to have gone to a diſtant country, or be dead, and his ſon or other heir be not yet capable of buſineſs, or if the debtor be a captive; even in theſe, and ſimilar caſes, no law ordains that the property ſhall not veſt in the creditor when the term of the mortgage is expired. It can only become the property of the debtor, or of his ſon, when the creditor, through tenderneſs, or at the interceſſion of others, reſtores it. But when the agreement runs in this form, "if I remain in my own country, and do not redeem the pledge, it ſhall become thy abſolute property;" then, ſhould the debtor reſide in a foreign country, he does not forfeit *the pawn*.

If the creditor reſide in a foreign country, the mode of proceeding has been mentioned (CIV and CVI). But if the chattel happen not to be appraiſed on that day, witneſſes muſt be taken of the debtor's going to the creditor's houſe for the purpoſe of redeeming the pledge. To this proceeding there is no objection. If a diſhoneſt creditor ſuffer the remaining days of the period to elapſe, and his fraudulent practice be proved, and the debtor's going to the creditor for the purpoſe of redeeming the pledge be alſo ſubſtantiated, no loſs is ſuſtained by the debtor. Again, if the creditor and his family were then abſent in a foreign country, but the debtor go to him on his return from abroad, we argue that there is no offence if the debtor afterwards go abroad. More would be ſuperfluous.

Under the firſt, third, fifth, eighth, and eleventh forms of agreement, if the pledge be long unredeemed, may, or may not, the creditor hypothecate it to another, or ſell it? In all forms of agreement, is a ſale valid, which is made on the ſuppoſition of property, in conſequence of long enjoying the pledge?

CXVII.

Menu:—If he take a beneficial pledge, he muſt have no other intereſt on the loan; nor, after a great length of time, *or when the profits have amounted to the debt*, can he aſſign or ſell ſuch a pledge,

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The firſt hemiſtich has been expounded (XCI), as forbidding other intereſt, when the uſe and profit of a pledge has been ſettled as the only intereſt. The laſt hemiſtich determines the two queſtions propoſed.

" After a great length of time ;" when it has long remained. " Aſſignment ;" in pledge to another. " Sale ;" an act deveſting his own property. However long it have remained, a pledge received, and left in his poſſeſſion after he has himſelf aſked money *of the debtor*, muſt not be aſſigned *by the creditor* in pledge to another perſon for a larger ſum. The *Retnácara.*

' Aſſignment in pledge to another ;' conſequently, ſo long as the debtor's property ſubſiſts, a creditor muſt not aſſign, as a pawn to another for money borrowed, a chattel pledged by his debtor. This text is expounded in a ſimilar manner in the *Méd'hâtit'hi*, and by Góvinda Rája. Váchespati Misra and Bhavadéva alſo concur in this interpretation.

' An act deveſting his own property :' ſale is a contract annulling the party's own property in his chattel after receiving a price ; but, in this definition, an act deveſting his own property *ſimply* is expreſſed by the word ſale : it conſequently ſuggeſts a gift or abſolute barter. The ox, pledged to, and poſſeſſed by me, ſhall be this day employed in burden by you ; but to-morrow your ox ſhall be employed by me : ſuch an exchange for one day is nevertheleſs unexceptionable. This *appears to be* meant in the *Retnácara.*

' After he has himſelf aſked *money of the debtor ;*' when the creditor demands money of the debtor, but he, though required, pays not the money nor receives back his pledge ; then, if the creditor, impelled by poverty, attempt to aſſign that ſame pawn to another perſon for money borrowed, the text prevents him. But Helâyudha explains " aſſignment " gift. In his opinion, the creditor may receive a loan from another perſon, aſſigning the pawned chattel in pledge to him. Cullúcabhatta alſo intimates, that the aſſignment of a pawn to another is unexceptionable, by adding, " for uſage allows hypothecation of mortgaged land or the like to another perſon."

On this interpretation, if the creditor contract a debt, aſſigning mortgaged land or the like to another, then, ſhould he haply be unable to diſcharge his own debt, and the *original* debtor come

to

to redeem his pledge, how ſhould the matter be adjuſted? On this it is correctly ſaid, if a pledge for cuſtody be transferred as a pawn to another, and the debt be leſs than the former one, or equal to it, then, diſcharging his own debt with the money paid by the original debtor, and *thus* redeeming the pledge, he ſhould reſtore it to the owner. But a pledge ſhould not be transferred as a pawn for a greater debt: this is expreſsly ſtated in the *Retnacára* and other works; " a pledge muſt not be aſſigned for a larger ſum." It ſhould alſo be conſidered as meant in the *Méd'hátit'hi*, and by GÓVINDA RÁJA.

If the pledge were for uſe, it ſhould be transferred without any contradiction to the *former* agreement. For example; it ſhould be aſſigned by the original creditor, with a declaration in this form, " the pledge ſhall be uſed ſo long as I do not cauſe the original debtor to pay the principal ſum *now borrowed*;" not in this form, " it ſhould be enjoyed ten years or the like." Yet if that be done by any careleſs perſon, let the pledge be lodged in the hands of the ultimate creditor, with the conſent of the firſt lender, along with a certificate of its value at the time, ſettled by an appraiſement made and ſigned by five perſons. But, in fact, ſhould a creditor transfer a pledge which he has received on diſſimilar terms, he ſhall be puniſhed. In the ſame mode ſhould the deciſion be alſo argued in other caſes. But the word " aſſignment" is properly expounded as ſignifying hypothecation; for, in certain caſes, hypothecation is forbidden, and gift may be comprehended in the definition of ſale. To include permanent barter, the word ſale muſt be taken in a ſecondary ſenſe.

This text is founded on reaſon or immemorial uſage. If a creditor therefore, in breach of this law, transfer a pledge which he had taken, a moral offence is not imputed to him, but the chattel muſt neceſſarily be reſtored to the debtor when he offers to redeem it (CIV); if the laſt lender refuſe to releaſe the pledge, the original creditor may be put to much trouble, or ſuſtain a loſs: this ſhould be underſtood. But the laſt creditor is only enabled to exact another pledge from the original lender, or payment of the principal and intereſt, not to refuſe the releaſe of the pledge. Should the creditor, in breach of this law, abſolutely give it to any perſon, the gift is not valid; whence then ſhould any benefit, ariſing from the gift, be even ſuppoſed? For he has no pro-

perty in the pledge, ſince it has not been relinquiſhed by the debtor; but its uſe alone has been conceded to him. "Who can benefit by giving away the property of another?" This text forbids a pretended gift. The ſale of a pledge will be conſidered in the chapter on Sale without Ownerſhip.

Mortgaged land or the like ſhould be carefully preſerved by the creditor; it ſhould not, *by any means*, be neglected. A debtor mortgages land for the debt contracted; the creditor uſes it a few years, and afterwards another poſſeſſes it without any oppoſition from him. In ſuch a caſe, the debtor could not redeem the mortgaged land, which had been poſſeſſed for twenty years; for he is poor: but ſees the land poſſeſſed by a ſtranger, yet aſſerts not his title, erroneouſly thinking his oppoſition improper, becauſe a ſtranger poſſeſſes it. Afterwards, when a law-ſuit is inſtituted, the poſſeſſor having acquired a title by undiſturbed poſſeſſion for twenty years, the land cannot be reſtored to the debtor offering to redeem the pledge, and the creditor muſt give other land as an equivalent. Therefore it ſhould not be neglected. This ſome remark.

But others aſk, why does not the debtor oppoſe *adverſe poſſeſſion?* Since the pledge is loſt by the fault of the debtor, an equivalent in land need not be given by the creditor. If the poſſeſſor, though verbally forbidden, do not refrain, what can the debtor ſay when he applies to the king? He may ſay, "this violent man poſſeſſes my land mortgaged to another; if the occupant be not now reſtrained, he will, after long poſſeſſion, aſſert a title, becauſe he may have poſſeſſed it twenty years." The debtor's not applying to the king is therefore an evident fault; why ſhould the creditor give an equivalent for land loſt by the debtor's fault? But if the poſſeſſor, attending the court, affirm, that the pledgee gave him poſſeſſion, and that plea do not then appear to be falſe; in ſuch a caſe indeed the pledge is loſt by the fault of the creditor alone: it is therefore proper he ſhould give an equivalent.

Others again hold, that the text of YÁJNYAWALCYA (CXIV) being equally applicable to a pledge received by another as to a pledge received by the poſſeſſor himſelf, no title to that land is gained by *adverſe* poſſeſſion for twenty years. On this account neglect has not been included *in the text* by the author of the *Retnácara* and the reſt. The juſtneſs of theſe opinions ſhould be

 examined

examined under the head of Title by Long Poſſeſſion: more would be here ſuperfluous.

The term (tranſlated "aſſignment") may ſignify the nature of the thing. For example, a bracelet, an ear-ring, or the like, made of gold, ſhould not, by expoſure to the fire, be reduced to gold bullion, *which is its natural form*: and the alteration of a pledge is forbidden by the word "and," *which bears the ſenſe of "and the like."*

But hypothecation is not forbidden in all caſes. For inſtance, one has contracted a debt, delivering a pledge on theſe terms, "the pledge may be uſed ſo long as I do not pay the principal ſum:" after a few years the creditor demands the debt from the debtor, but he is unable to diſcharge it; the creditor therefore aſſigns the pledge to another on ſimilar terms, and borrows an equal ſum. Such caſes occur in practice.

This text (CXVII), according to CHANDÉSWARA, VÁCHESPATI, BHAVADÉVA, and others, concerns a pledge for uſe or cuſtody with no ſpecial agreement. But the author of the *Calpateru* ſays, it concerns a pledge to be uſed. This is mentioned on conſideration of the chief intent of the text, but with no view of reſtricting it to pledges for uſe. CHANDÉSWARA ſo expounds the text. But the author of the *Mitácſhará* holds, that it ſolely concerns pledges for uſe; this is only ſuitable on his interpretation.

A certain author has thus expounded the text: ſince a period has been ſpecified, no aſſignment or ſale of a pledge ſhould be made by the debtor within the ſtipulated period. He thinks that the creditor, having no property in the pledge, could not be ſuppoſed entitled to give or ſell it; a prohibition would be therefore impertinent. It ſhould not be objected, that this would contradict the text, "if a pledge be ſold, the ſale ſhall be valid;" ſince the ſale of mortgaged property, being forbidden, could not be valid: the difficulty, *he thinks*, is removed by referring that text to a pledge unlimited as to time. But this does not coincide with the opinion of CHANDÉSWARA and the reſt: becauſe, in the firſt hemiſtich (CXVII), an agent being ſought for the phraſe "muſt have no other intereſt," the creditor is of courſe ſuggeſted as the agent: here alſo, it being queſtioned who cannot ſell the pledge, the ſame perſon, already ſuggeſted, muſt

be the agent *in the ſentence :* accordingly the gloſs of the *Calpateru*, *Pārijāta*, and *Mitácſharā*, muſt be ſupplied with the words "ſhall not be made by the creditor."

When a debtor, having mortgaged land or the like to a creditor, ſells the ſame property, or abſolutely gives it away to another; then, ſince coexiſtent mortgage and ſale, or mortgage and gift, are incompatible, it will be ſtated, under the title of Comparative Force of Contracts, that the lateſt contract, whether ſale or gift, is valid. Hence the gloſs, which ſuppoſes gift or ſale by the debtor prohibited, is irrelevant. It ſhould not be objected, how can gift or ſale be valid, ſince, by ſtipulating a ſpecifick period, the owner has conceded his independence? Although he be not independent, his property ſubſiſts. Conſequently, the efficient validity of ſale or gift is uncontroverted, if it be ſaid, as the debtor's property in the pledge was abſolute, ſo ſhall be the buyer's or donee's: and authors have not ſtated as unfounded the text, "an unredeemed pledge ſhall neither be ſold nor given away." Such is the mode of interpretation agreeable to the gloſs of CHANDÉSWARA: VÁCHESPATI and BHAVADÉVA concur in the ſame expoſition.

The text of YÁJNYAWALCYA (CXII) concerns the caſe of an agreement in the ſecond form, "if I do not redeem the pledge when the double ſum has been realized, it ſhall become thy abſolute property." The text of MENU, "nor, after a great length of time, can he aſſign or ſell ſuch a pledge" (CXVII), concerns the caſe of an agreement in the firſt form, where the clauſe, "it ſhall become thy abſolute property," has not been inſerted. No contradiction can be ſuppoſed between theſe two forms of agreement.

In all agreements for a definite time, if the debtor wiſhes to redeem the pledge within the ſtipulated period, by paying the principal and intereſt, VRIHASPATI propounds the law for that caſe.

CXVIII.

VRIHASPATI *:—When a houſe or field, mortgaged for uſe, has not been held to the cloſe of its term, neither

* The firſt verſe has been already cited and numbered CV.

neither can the debtor obtain his property, nor the creditor obtain the debt.

2. After the period is completed, the right of both to their reſpective property is ordained; but, even while it is unexpired, they may reſtore their property to each other by mutual conſent.

"For uſe;" the ſeventh caſe has a caſual ſenſe. Conſequently the meaning is, a houſe or field which has been mortgaged for uſe. "When that has not been held to the cloſe of its term;" when it has not reached the full term: neither can the creditor then recover the debt, nor the debtor obtain his mortgaged property. Conſequently, from this reſult, that, while the period is incomplete, the debtor ſhall not obtain his pledge, nor the creditor recover the debt, it follows, that the wiſh of recovering the pledge is ineffectual. After the period is completed, the right of both the creditor and debtor to the money lent, and to the pledge reſpectively, that is, the free uſe of their own, is *in full force*. Conſequently the creditor has a right to the money lent, and may uſe it as his own, at the full term; and the debtor has the ſame right to the property mortgaged. Yet, even while the period is unexpired, if the creditor voluntarily accept payment of the debt, and reſtore the pledge, or if the debtor freely diſcharge the debt to recover the pledge, the debtor's right to the pledge, and the creditor's right to the money lent, are immediately efficient. The Sage declares it, "but even while it is unexpired, &c." they may act by mutual conſent; may accept the debt, and receive back the pledge: with the conſent of the creditor, the debtor may take his pledge; and with the conſent of the debtor, the lender may take his money. Conſequently, while the period is unexpired, the debtor's wiſh to recover his pledge is fruitleſs, without the conſent of the creditor; and the creditor's wiſh to obtain the money, without the conſent of the debtor: but, with the conſent of both parties, it is effectual. Such is the interpretation according to the gloſs delivered in the *Retnácara*.

In ſome parts of the *Retnácara* the laſt hemiſtich is found *with this reading*, "but, even while it is unexpired, they muſt perform

form what was agreed by both parties." That is not found in the *Chintámeni*, nor is it quoted by BHAVADÉVA, nor inserted in the *Mitácshará*. If *this reading be* well founded, the sense is this: were it declared by the debtor or creditor, at the time of contracting the debt, " even before the period expire, if the principal and interest can be paid, the pledge must be restored ;" in such a case, the pledge may be restored, and the debt be discharged, even while the period is unexpired. If this reading of the last hemistich be unfounded, the same sense may be deduced from the phrase " by mutual consent." For the mutual agreement of the parties when the loan was advanced, as well as consent when payment is tendered, may be signified by the words " mutual consent."

If the agreement run in this form, " take this land as a pledge, and lend me twenty *suvernas* ;" when should the pledge be redeemed? On this point it is said, such being the words uttered by the borrower, the lender must ask, " how long shall I use the pledge ?" In answer to which, the borrower specifies a a term. When the debtor has been long in the habit of receiving and repaying loans *of the same creditor*, then, nothing being expressly declared, there is no tacit agreement in regard to the term ; consequently, this agreement falls within the forms above mentioned. Or, should it any-how exceed that enumeration of forms, the pledge must be restored when the double sum has been received ; for it is of course legally fit that a pledge be restored after the double sum has been received.

Under the general law, that a pledge shall be used until the debt be repaid (CXI), is not the use of the pledge proper until the principal sum be discharged ? No ; from the coincidence of the text of CÁTYÁYANA, V. xxxvii 3, (where the use of a pledge for a loan made with an agreement, that the whole use and profit of the pledge shall be the only interest, is denominated interest from the use of the pledge, and which is also called interest by enjoyment,) this text (CXI) must be referred to the same case. It should not be objected, that there is no argument for the restoration of a pledge, in such a case, after the double sum has been realized. The text of YÁJNYAWALCYA (XLVI) is authority for such an induction. Nor should it be objected, that this contradicts the text of VISHNU (CX). That text is limited

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to immoveable property. Nor ſhould it be aſſerted, that the word "immoveable" is merely illuſtrative of a general ſenſe. There is no proof *to ſupport ſuch an aſſertion;* nor any grounds for reſtricting the text of YAJNYAWALCYA. A pledge unlimited as to time muſt therefore be releaſed when the double ſum has been realized, provided it conſiſt of moveable property; but immoveable property, under the authority of the law, may be uſed ſo long as the principal remain undiſcharged. Even though it be not then redeemed, the debtor does not forfeit his property in the pledge; for the text (CXII) concerns the caſe of an agreement containing a clauſe to this effect, "it ſhall become thy abſolute property." But, if the debt be contracted on a pledge given for confidence only, without *ſuch* a ſpecial agreement, the debt ſhould be recovered by the ſame mode of recovery as ordained for debts unſecured by a pledge.

A pledge delivered by the pledger, to give confidence to the lender, muſt be carefully preſerved by the creditor, and be reſtored on receipt of the whole ſum due. The *Retnácara.*

Conſequently, in the caſe of a pledge to be uſed, ſince the creditor may derive benefit from the uſe of it, he has no ſolicitude in regard to the payment of the money. But, in the caſe of a pledge to be kept only, the creditor derives no benefit from the pledge; on the contrary, he has the trouble of keeping another's property; he may therefore be anxious to recover his money: but, ſince there is no other mode, he muſt adopt one of the five modes of recovery, that which is conſonant to moral duty, ſuit in court, legal deceit, lawful confinement, or violent compulſion: and, in ſuch a caſe, the time for recovering the debt is that which was ſtipulated by the borrower for the payment of the debt; or, if none were ſtipulated, the period when the debt is doubled; for that is preſcribed by law as the time for redeeming a pledge. This is conſiſtent with reaſon: and this mode of proceeding, ſay ſome lawyers, ſuppoſes a caſe where the uſe of the pledge has been forbidden; or it ſuppoſes the caſe of a pledge conſiſting of maſſes of iron, and the like.

But, if the debtor be abſent, having abſconded, or the like, from whom ſhall the creditor recover his money? A text of law, cited in the *Retnácara,* provides for this caſe.

CXIX.

Smr̆iti :—After giving notice to the debtor's family, a pledge for cuſtody may be uſed when the principal is doubled, and ſo may a pledge for a limited period when that period is expired.

When the principal is doubled, a pledge for cuſtody may be uſed after giving notice to the debtor's family in this form: "Having borrowed money from me, but not having yet re- "deemed the pledge, the debtor has abſented himſelf, and the "principal has been now doubled by the intereſt: thou art his "heir; I therefore give thee notice, as required by law, that "henceforth the pledge will be uſed by me." The Sage's meaning is this; if the debtor's heir himſelf pay the debt to the creditor, and take the pledge; or if he ſay, "wait a few days, I ſhall ſend information to the debtor;" the pledge muſt not be then uſed. But if the heir do not redeem the pledge, nor give information *to the debtor*, then, taking the atteſtation of ſeveral perſons, the creditor may uſe the pledge.

"A pledge for a limited period;" a pledge, for which a ſpecifick period has been fixed, may be uſed after that period has expired, notice being firſt given to the debtor's family. Such is the ſenſe of the text.

The uſe of a pledge delivered for uſe may be renewed: if it be agreed, "the pledge ſhall be enjoyed for two years; after- "wards, paying the debt, I will redeem this pledge delivered for "uſe; the uſe of the pledge ſhall ceaſe at the cloſe of that pe- "riod:" in ſuch a caſe, if the debtor, happening to go to another country, be abſent, and the debt be not paid, nor the pledge redeemed, then the uſe of the pledge is authorized after notice given to the debtor's family. What is ſaid by the author of the *Retnácara*, ('this authorizes the uſe of a pledge delivered for uſe, without however conveying the abſolute property, if no period were ſtipulated,') intends generally any moveable pledge for uſe under ſuch circumſtances. But immoveable property being pledged for uſe, muſt only be relinquiſhed, if it were agreed, "I will reſtore it when the principal is doubled, or the like;"

like;" for, ſince it cannot move to another place, there can be no apprehenſion of its being ſeized by another perſon. But moveable property muſt be preſerved with the utmoſt care, until it be reſtored to the debtor.

In the preſent caſe, after notice given to the debtor's family, the uſe of the pledge is to be taken as wages *for the care of it.* This is intended by the text. Here "the debtor's family" is merely an inſtance of a general injunction: therefore, if the debtor himſelf be preſent, but procraſtinate the redemption of the pledge, it is reaſonable that the creditor ſhould uſe it after giving him notice; and this may be equally affirmed of pledges for cuſtody, and pledges for uſe: it ſhould be *ſo* argued if the agreement be in the ſixth or other ſimilar form above ſtated, and ſometimes alſo in other caſes.

It appears from the term "may be uſed," and from the gloſs, "this authorizes the uſe of a pledge, without however conveying the abſolute property," that the creditor ſhall only uſe the pledge: he has no property therein. Conſequently, although the creditor uſe the pledge, it muſt be reſtored to the debtor returning after the lapſe of ſeveral years. Such is the ſenſe of the law.

In ſuch a caſe ſhall the principal ſum be received by the creditor with the whole intereſt? To this queſtion the anſwer is, it appears from the conditions in the text of VRĬHASPATI (XCII), "before intereſt ceaſe on the loan, or before the ſtipulated period expire," that there is no forfeiture of intereſt in conſequence of uſing a pledge for cuſtody after the period has elapſed, or the like. But, in the caſe of clothes and ſimilar things, ſince they would be totally ſpoiled by uſe, it is reaſonable that the principal and intereſt ſhould be forfeited *in conſequence of uſing them.*

But if the debtor die, or abſcond, and notice cannot be given to his family, what is to be done? A text quoted in the *Retnácara* provides for that caſe.

CXX.

Smrĭti:—If the debtor be miſſing, or dead, let the creditor produce the writing *in a court of juſtice,* and

and obtain a certificate from the court, ſpecifying the period which it bore.

Let the creditor produce the writing in the king's court, and there obtain a document ſpecifying the term which it bore; let him there obtain a certificate. A creditor uſing a pledge after ſuch *precaution*, commits no offence. The *Retnácara*.

The meaning is this: when a debtor is miſſing, or has abſconded, the pledge may be uſed after notice given to the debtor's family, as ordained by the preceding text; but, if notice cannot be given to his family, then, producing the writing in the king's court, let the creditor obtain a certificate. If the debtor be dead, the pledge may be uſed after notice given to the debtor's family, as is ſignified in the preceding text; yet, if notice cannot be given to the debtor's family, but heirs of the debtor exiſt in ſome *other* country, let the creditor produce the writing in the king's court, and obtain a certificate. Such is the ſenſe of the text.

The certificate is delivered by the king conditionally; it ſhould expreſs, "until the debtor or his heir attend, the pledge ſhall remain with thee, and ſhall be uſed by thee." "A certificate from the court;" a writing certifying the continuance of the pledged property with the creditor. That the pledge ſhall be uſed, appears from the expreſſion in the *Retnácara*, "a creditor uſing a pledge after ſuch *precaution*, commits no offence." But if neither the debtor nor his heir be *living*, the mode of proceeding in that caſe will be ſubſequently mentioned from a text of CÁTYÁYANA.

CXXI.

VRĬHASPATI, cited by MISRA and BHAVADÉVA, under the title of Recovery of Debts:—When the debt is doubled by the intereſt, and the debtor is either dead, or has abſconded, the creditor may attach his *pledge, or the debtor's* chattel, and ſell it before witneſſes:

2. Or having appraiſed it in an aſſembly of good

 men,

men, he may keep it ten days; after which, having received the amount of his debt, he muſt relinquiſh the balance *if there be any:*

3. Having aſcertained his own demand by the help of men ſkilled in arithmetick, and taken the atteſtation of witneſſes, he commits no offence by thus recovering it.

Theſe texts are alſo cited in the *Retnâcara*, but the reading is *tad bandhujnyâtividitam*, inſtead of *taddhanam jnyâtrĭviditam*, and it is expounded, "notice having been given for the aſſurance of the debtor's relations *."

CXXII.

CÁTYÁYANA:—When the pawner is miſſing, let the creditor produce his pledge before the king; it may be then ſold, with his permiſſion: this is a ſettled rule:

2. Receiving the principal with intereſt, he muſt depoſit the ſurplus with the king.

Theſe texts of VRĬHASPATI (CXXI) are contradicted by the text above quoted (CXX); for that text ſuggeſts, that if the debtor be not preſent, the pledge ſhould be uſed after obtaining the king's ſanction; but the text of VRĬHASPATI ſuggeſts, that the pledge may be ſold if the debtor be not preſent: conſequently there is an evident contradiction in authorizing the uſe and the ſale of the ſame thing in the ſame caſe. An alternative is therefore allowed in this caſe by the ſyſtem of civil law; for an alternative is true in logick when the matter is totally optional. Conſequently, when the debt is doubled, and the debtor is not preſent, being dead, or having abſconded, the creditor may uſe the pledge after giving notice to the debtor's family; if notice cannot be given to the debtor's family, the creditor may exhibit the writing before the king, and uſe the pledge with his permiſſion:

* See a further comment on theſe texts after V. 291.

ſion: this is one option. Or waiting, or not waiting ten days, he may ſell the pledge: this is a ſecond option.

The text of VRĬHASPATI may be thus expounded: "When the debt is doubled by the intereſt;" this is a general illuſtration, the ſame muſt be underſtood when the period has expired. It is a mere inſtance: the caſe deſcribed relates only to ſilver coins and the like; but if grain or other commodities were lent, it ſhould be ſaid, when the principal is quintupled or the like. "And the debtor is dead," or has gone to another country, "or has abſconded;" that is, cannot be found, becauſe he conceals himſelf. But if the debtor live in another country, and ſome perſon who is his heir ſay, "let the ſale be poſtponed for ten days, I will fetch the debtor, or bring money from him and redeem the pledge;" in that caſe the creditor ſhould keep the pledge ten days, but he ſhould previouſly appraiſe it. The words "ten days" are merely illuſtrative; in proportion to the number of days in which the debtor can arrive, ſo long ſhould he keep it, as awarded by arbitrators.

If the value of the pledge exceed the amount of principal and intereſt, what ſhould be done? The Sage declares, he ſhould take the amount of his debt and no more. What ſhall be done with the ſurplus? The Sage declares, "he muſt relinquiſh the balance;" he muſt deliver it to the heir, or to the king. The text is ſo expounded by BHAVADÉVA.

"*Jnyátrĭviditam* (according to one reading of the text), known to witneſſes;" having taken the atteſtation of witneſſes. Conſequently the taking *of a pledge in payment of a debt* ſhould be atteſted, as well as the ſale of it. "He commits no offence;" VÁCHESPATI expounds the word in the neuter ſenſe: a creditor recovering his debt, even by compulſion or the like, ſhall not be puniſhed by the king.

CXXIII.

YÁJNYAWALCYA:—Or, even in the abſence of the debtor, the creditor may ſell the pledge before witneſſes.

If the debtor or pawner be not *preſent*, then, ſelling the pledge and

and taking the amount of the debt, the creditor ſhould deliver the ſurplus to the heir, or to the king. The *Dípacalicá.*

The meaning is this: if the debtor live in another country, or happen not to be preſent, the creditor ſhould deliver the balance of the price to the debtor's ſon, brother, or the like, before witneſſes, that the debtor may receive it when he returns. This appears from the gloſs of BHAVADÉVA and of the *Dípacalicá.* As a debtor, if the creditor be abſent, depoſits the amount of the debt with his ſon or other heir, ſo the creditor, if the debtor be abſent, depoſits the balance of the price obtained for the pledge with his ſon or other heir. This alſo is founded on the gloſs of BHAVADÉVA and of the author of the *Dípacalicá.* If there be no heirs, or if they be abſent, or if they refuſe to receive it, he ſhould deliver it to the king (CXXII.)

"When the pawner is miſſing (CXXII);" when he cannot be found, being dead, having abſconded, or having gone to a diſtant province, the debt being doubled by the intereſt, let the creditor apply to the king, and alſo produce the writing: this muſt be underſtood. "With his permiſſion;" with the king's conſent to the ſale, the pledge may be then ſold: the text muſt be ſo ſupplied. After which, taking no more than the principal and intereſt of the debt from the price for which the pledge is ſold, let him deliver the balance to the king. This diſtinction occurs: if the debtor be actually living in another country, it is merely intruſted to the heir, or to the king; but if he be dead, the creditor ſhould give it to the heir, or, on failure of heirs, to the king. This is reaſonable: a debtor having delivered a pledge to a creditor, has property in the pledged chattel ſo long as he lives; afterwards, his property being deveſted by death, property veſts in his heir; it is therefore proper to give his chattel to him. On failure of heirs, property veſts in the king; but under the rule of VISHNU (Book V, v. 417) the failure of heirs ſignifies the failure of fellow-ſtudents. Accordingly CHANDESWARA, in expounding the text of CÁTYÁYANA (CXXII), delivers this gloſs, "when the pawner is not living, nor any perſon entitled to inherit from him." But the *eſcheated* pledge of a *Bráhmana* muſt be given to learned men, or to prieſts, under the text of DÉVALA (Book V, v. 445). All this will be diſcuſſed under the title of Inheritance.

CXXIV.

CXXIV.

Yájnyawalcya:—A debtor ſhall be compelled to pay, with intereſt, a debt contracted on the pledge of religious merit; and he ſhall be compelled to repay two-fold a debt contracted on a chattel *of ſmall value* delivered with a ſolemn aſſeveration.

"Religious merit;" the uſe of ſacrificial fire, ablutions in the Ganges, and the like: what is received on ſuch a pledge muſt be repaid with intereſt. What has been lent on a pawn of ſmall value, delivered with a ſolemn aſſeveration, in this form, "it ſhall certainly be redeemed by me," muſt be repaid two-fold, if the debt remain long due; the pledge ſhall not be ſold by the pledgee.

It is noticed in the *Dípacalicá*, that the text is read in the *Viſwarúpa*, "*charitra*" inſtead of "*cháritra*." The commentator's opinion is this: *charitra* ſignifies act or practice; *cháritra* has the ſame ſignification; the meaning therefore is, what is borrowed on the pledge of ablutions in the Ganges or the like.

Ablutions in the Ganges, and other religious acts, are pledged when the debtor, on contracting the debt, ſays, "until I repay thy loan I will not bathe in the Ganges." The term "uſe of ſacrificial fire," relates to the voluntary uſe of it *on ſpecial occaſions*, not the continual uſe of it *by thoſe who maintain a perpetual fire*. Here ablutions in the Ganges and the like conſtitute a beneficial pledge to be kept only, not a pledge to be uſed; ſince the debt therefore is not diſcharged by the uſe of it, how ſhall it be diſcharged? The Sage therefore ordains, that he (the king) ſhall compel the debtor to pay the debt with intereſt. The meaning conſequently is, that payment ſhall be enforced by the king.

Chandéswara delivers a ſimilar gloſs, but he reads the text *(as in the Dípacalicá) charitra bandhaca critam*, and expounds it, "for if ablutions in the Ganges be not performed, the king ſhall compel the debtor to pay the debt with intereſt."

"When ablutions are not performed;" they are hypothecated, and

and therefore not performed. We explain *charitra*, ablutions in the Ganges and the like; *cháritra*, the benefit arising from such *ablutions*. When that is pledged "*the debtor shall be compelled &c.*;" for instance, when a debt is contracted with an agreement in this form, "if I do not repay thy loan, the benefit of my ablutions in the Ganges shall accrue to thee." But this can only be a pledge for custody, for it would be lost *to the debtor* were it enjoyed *by the creditor*; the debt must therefore be discharged as in the case of pledges for custody: the pledge is not forfeited. The author of the *Mitácshará* delivers a similar exposition.

"A pawn of small value;" a pledge, of which the value does not exceed twice the amount of the debt. This half of the text (CXXIV) restrains a creditor who might attempt to sell the pledge, on this reflection; "twice the amount of the debt is receivable by me, what objection therefore can the debtor have to the sale of this pledge?" The meaning is, since no agreement was made, when the debt was contracted, to authorize a sale, how should the pledge be sold? This must be understood when the pledge is not redeemed after the principal is doubled. However, there is no offence in a sale made, after application to the king, with the king's permission.

We hold, that, when no pledge is delivered by the debtor, but he solemnly promises, at the time of receiving the loan, "I will assuredly repay thee thy loan," then conscientiousness is in reality his surety. In that case, on proof of the debt, he shall be compelled by the king to pay twice the amount. To enlarge on this subject would be superfluous.

On this text the author of the *Mitácshará* thus comments: "A pledge by *the* act *of the parties* is *charitra bandhaca*. Consequently, when a pledge of greater or less value is taken with the free consent of the debtor or creditor, the double sum only shall in that case be received by the creditor; that is, the pledge shall not be forfeited. At the period when the principal is doubled, the double sum only shall be paid; there shall be no forfeiture of the pledge. In the case of earnest also, there is no forfeiture of a pledge." This is only suitable on his interpretation. He expounds the terms of the text otherwise ("earnest delivered," instead of "solemn asseveration"); this other subject is incidentally

ally introduced under the title of Pledges. He adds, when the merchant who buys a commodity, giving earneſt to the merchant who ſells it, concludes a bargain for the purchaſe of goods amounting to a thouſand *mudras*, if the buyer break the agreement, *the earneſt* ſhall be forfeited; if the ſeller break the agreement, it ſhall be repaid two-fold.

Sect. III.—*On the Validity of Hypothecation and Mortgage.*

CXXV.

Vyása:—Pledges are declared to be of two ſorts, immoveable and moveable; both are valid when there is actual enjoyment, and not otherwiſe.

And this concerns a pledge delivered for uſe.

CXXVI.

Vrĭhaspati:—Of him who does not enjoy a pledge, nor poſſeſs it, nor claim it *on evidence*, the written contract *for that pledge* is nugatory, *like a bond* when the debtor and witneſſes have deceaſed.

Here, *terms of compariſon*, as and ſo, muſt be aſſumed. "When the debtor and witneſſes have deceaſed;" when neither the debtor nor the witneſſes exiſt. Hence, as a writing executed by the debtor and atteſted by witneſſes is nugatory unleſs the debtor or witneſſes be living, ſo of him who enjoys not a pledge, nor makes it his own, nor ſhows to others that the pledge was actually received, the writing, though complete, is no evidence ſo far as concerns the pledge. The *Retnácara.*

Even after the death of the witneſſes and debtor, if the creditor

ditor actually enjoy the pledge, that pledge is valid; how can it be asserted that the writing is nugatory? To this it is answered, some person comes and makes a demand upon another in these words, "thy father is my debtor, inspect this bond; all those "who witnessed it are dead, and thy father also is dead:" as in this case, so, if there be no other proof of a pledge, a mere writing is nugatory, because it is unavailing. That is mentioned by way of example. Or, *it may be thus explained;* if a chattel belonging to some person have been enjoyed for a few days *only* by another, or be contested, and the possessor, sued by the owner before the king, allege, "his father received a loan from me, and the bond is forthcoming;" then, if the witnesses be dead, the writing is nugatory, even though there be actual occupancy. Such being the case, there is no difficulty *in explaining the text* without assuming *the terms of comparison* as and so; for the sense would be, he who does not actually *possess nor* enjoy the pledge may not claim it; and a writing is nugatory when the witnesses and debtor are deceased: and in this case, undisputed possession, and a term *fixed* for the restoration of the pledge, must be understood. It may therefore be affirmed, that when possession has been interrupted, but witnesses are living, the pledge is valid; yet, in the case of uninterrupted possession, the pledge is valid even though the witnesses be dead.

'Nor shows to others, &c.' to others besides those named in the writing, that is, for the purpose of evidence. Consequently the affirmation of it to another should only be made in the presence of the defendant. Or "claim" may signify sue before the king. The writing, though complete, is no evidence, even though correctly drawn, in the form already described, with all its conditions, "first inserting the lender's name and so forth." Hence a writing in this or other similar forms, "I borrow one hundred *suvernas* from DÉVADATTA," is certainly unavailing.

"It is no evidence so far as concerns the pledge;" it follows, that the writing may be good evidence so far as concerns the debt. Consequently the sense is this; if there be a writing, payment of the debt proved by that writing shall be enforced; but, without *actual* occupancy, a pledge, though proved by that writing, shall not be obtained. Why does he not actually enjoy or occupy it? Has it been restored on receipt of another pledge, or

or has it been releafed on a folemn promife *of payment* or the like? Or the fenfe may be this; if the loan have been actually received from the creditor by the debtor, for what fault fhould the creditor lofe it? But a pledge long unenjoyed cannot be feized. As a man's own effects, being neglected by him and long poffeffed by a ftranger, become the abfolute property of the poffeffor; furely, if a pledge, which is the property of another, be not poffeffed by the pledgee, it is the abfolute property of the owner who does poffefs it.

What then is fuggefted by the word "claim?" for thofe to whom the claim is fhown become witneffes only; but if the thing be unpoffeffed through neglect, of what ufe are witneffes? The anfwer is, he fhould fully fhow, in an affembly of people, the reafon why he has not poffeffion. For inftance, "executing a mortgage deed to me, he has received a loan, why does he not deliver the pledge?" Such a difpute is fuppofed. But if a conteft do fubfift, as poffeffion is not *then* valid *without proof of right*, neither is an unenjoyed pledge valid. This is one cafe. "This ornament is pledged to me: but his daughter's nuptials will be celebrated two months hence; his wife may wear it for that period, afterwards it muft be delivered to me." This is another cafe. On thefe and fimilar occafions, if the recorded witneffes be alive, they can depofe thefe circumftances. There is not confequently any contradiction between the firft and laft cafe.

Here the expreffion "does not enjoy" concerns a pledge for ufe; "nor poffefs" concerns a pledge for cuftody; "nor claim" concerns both. The *Retnácara.*

But this text does not concern a pledge for cuftody confifting of ablutions in the Ganges, or other obfervances producing religious purity; for it is not applicable *to fuch pledges.*

And this is nearly, *but not ftrictly true;* for a pledge, whether for ufe or cuftody, may be confirmed, although it be not afcertained whether it have been actually poffeffed or not.—The *Retnácara.*

This meaning is intimated; although he have not himfelf fhown his claim to other men, yet if they know *and depofe* the whole circumftances, even in that cafe alfo the pledge is confirmed.

A text of law, cited in the *Retnácara*, exprefsly declares the nullity of a pledge in a cafe of neglect.

CXXVII.

CXXVII.

Smriti:—A houfe, *a refervoir of* water, a market place, grain, women, beafts of burden, *and the like*, are deftroyed or fpoiled by neglect.

"A market place;" a place where commodities are fold.

The *Retnácara.*

"Water," preferved for his own ufe. "A refervoir of water;" a well or the like. "Beafts of burden" are expreffed in the plural number, to fignify "and the like." Confequently a garden, a field, and the like, are comprehended by the text; in fhort, all *kinds of* pledges are deftroyed by neglect. If the pledgee neglect it, a houfe is deftroyed or fpoiled for want of thatching; a well or the like, for want of extracting earth by which it is choked; a market, for want of concourfe of buyers and fellers through fear of ill difpofed perfons; grain, by robbery or the like; cattle, women, and beafts of burden, for want of food or care: fo in other inftances according to the circumftances of each cafe.

"They are deftroyed," and utterly loft; or they remain, but are fpoiled and become unfit for ufe. By this mention of things deftroyed or fpoiled, neglect is fhown blameable; and it is a fault on the part of the creditor. Confequently, if the pawner preferve them, they would be poffeffed by the debtor: but if he do not preferve them, they are loft; and why fhould another pledge be delivered to the creditor? The debt therefore remains unfecured by a pledge.

CHANDÉSWARA remarks; "*when* mortgaged houfes and the reft are deftroyed or fpoiled by the fault of the pledgee, the mortgage is annulled. It is therefore implied, that another pawn fhall not be given by the pawner in confequence of the pawnee's fault." It is confequently evident, that the fame opinion has been entertained by CHANDÉSWARA.

"By the *actual* poffeffion of a pledge, the validity *of the contract* is *maintained*" (XCVI). The fenfe is, by actual poffeffion only of a pledge is the validity of the contract *maintained;* for the text coincides with thofe of VYÁSA and VRĬHASPATI. Confequently, if it be neglected, there is no poffeffion of the pledge, as already

already explained. Hence, if a creditor having loſt one pledge demand another; or if he attempt to ſeize a pledge ſaved by the debtor, who interfered when loſs impended through *the creditor's* neglect; in ſuch caſes the creditor ſhall not obtain the pledge. So much is declared. Yet, if the creditor did not neglect the pledge, but it be ſpoiled by the act of God, another pledge ſhould be delivered. This the Sage declares; "if it be ſpoiled, though carefully kept, &c." (XCVI). Spoiled is there illuſtrative of detriment.

CXXVIII.

CÁTYÁYANA:—Should a man hypothecate the ſame thing to two creditors, what muſt be decided? The firſt hypothecation ſhall be eſtabliſhed; and the debtor ſhall be puniſhed as for theft.

"Decided;" ruled. The *Retnácara*.

Conſequently the laſt hypothecation is not valid: and this ſuppoſes that both mortgagees have obtained poſſeſſion; if either or both have not obtained poſſeſſion, the hypothecation to him who obtains not poſſeſſion is invalid, as above mentioned. Both may have obtained poſſeſſion of the ſame thing: for inſtance, one has had poſſeſſion for a few days; afterwards the other, diſſeiſing him by force or fraud, poſſeſſes the thing a few days. Again; the thing is poſſeſſed by one through force or the like, but the other diſſeiſes him; in this caſe, the attempt to take poſſeſſion on the part of him who diſſeiſes the other, is well argued to be *a ſufficient act of* occupancy: where neglect is declared a cauſe of invalidating the mortgage, there, if the claimant, long attempting but not obtaining poſſeſſion, has been content, it is *conſidered as* neglect.

"The debtor ſhall be puniſhed as for theft:" for pledging the ſame thing to two perſons, the pledger ſhall be puniſhed as for theft. VISHNU expreſsly declares it.

CXXIX.

VISHNU:—He who has mortgaged even a bull's hide

hide of land to one creditor, and, without having redeemed it, mortgages it to another, ſhall be corporally puniſhed *by whipping or impriſonment;* if the quantity be leſs, he ſhall pay a fine of ſixteen *ſuvernas.*

"Even a bull's hide of land;" land to the quantity of a bull's hide. The definition of a bull's hide will be cited further on. If he *twice* mortgage a leſs quantity than that, he ſhall be fined in ſixteen *ſuvernas.* On a curſory view there ſeems diſparity in the puniſhments, by corporal chaſtiſement, and by a fine of ſixteen *ſuvernas.* This it would be proper to examine under the title of Fines; *it muſt be here unnoticed,* for what would avail a miſplaced diſcuſſion vainly ſwelling the book?

The laſt hypothecation is invalid, according to MISRA, BHAVEDÉVA, and others; herein the *Retnácara, Párijáta, Smrĭti ſára* and other works concur. Puniſhment only is ſhown by the text of VISHNU, the invalidity of the laſt hypothecation is inferred as a conſequence. If the laſt hypothecation were valid, the firſt would be certainly void; for one contract muſt avoid: conſequently the words "without having redeemed it" are pertinent. The firſt mortgage therefore, not being redeemed, is valid; and hence it follows, that the laſt mortgage is void. But ſome think the validity of the laſt hypothecation implied in the puniſhment of the debtor. This and other *deviations* are liable to objection.

The text concerns land alone. BHAVADÉVA.

MISRA and BHAVADÉVA read "land exceeding *the quantity of* a bull's hide only." MISRA remarks, that the ſale of it without ownerſhip is prevented. VISHNU explains the quantity of a bull's hide.

CXXX.

VISHNU:—That land, whether little or much, on the produce of which one man can ſubſiſt for a year, is called the quantity of a bull's hide.

"Little

"Little or much;" if the land be excellent, and very productive, one man may ſubſiſt for a year on the produce of a ſmall quantity of land, and the value of that land is great: but if its produce be ſmall, a greater quantity of land is *requiſite for* ſuch *maintenance of one man.* Conſequently the value of ſuch leſs quantity of *fertile* land, and greater quantity of land *not fertile*, is the ſame. They are equal in value, and the puniſhment ſhould be determined by the value of the land.

CXXXI.

Smrĭti, cited in the *Retnácara*:—If two men, to whom the ſame property has been pledged, enter into a conteſt, to him who has poſſeſſed the land it ſhall belong if no force were uſed.

The conſtruction is, "who has poſſeſſed the land without uſing force." The text muſt be ſupplied, "that land ſhall belong to him." The *Retnácara*.

If the ſame property have been mortgaged to two perſons, and the pledge have been given to one before the other, but one has poſſeſſion and the other has not poſſeſſion, the pledge belongs to him only who has poſſeſſion, not to him who has not poſſeſſion, even though he be the firſt mortgagee; for a pledge is invalid without poſſeſſion, as has been already ſtated. Ultimately, this text bears the ſame import; but there is no vain repetition, ſince both texts were not delivered by the ſame legiſlator, VRĬSHASPATI.

HELÁYUDHA, VÁCHESPATI, BHAVADÉVA and others read, "he who has poſſeſſed it ſhall prevail" *(yaſya bhuctirjayaſtaſya)*. That reading is alſo admitted by CHANDÉSWARA, but he has quoted the other reading *(yaſya bhuctirbhuvaſtaſya)*.

If the ſame property be mortgaged to two perſons, and be poſſeſſed by both of them, what ſhould be the deciſion in that caſe?

CXXXII.

VRĬHASPATI:—If one field have been mortgaged

 to

to two creditors, *so* nearly at the same time that no *priority can be proved,* it shall belong to that mortgagee by whom it was first possessed *without force.*

"Nearly at the same time," so that it cannot be known which was first and which last.

By both these texts it is declared, that of two mortgages, in which no priority of time can be ascertained, that mortgage is valid under which possession has been *first* obtained without force. The *Retnácara.*

The meaning is this: if the witnesses be living and depose, "through accident the creditor does not enjoy the thing mortgaged to him; there is no neglect on the part of any person, but we do not remember when it was mortgaged to the creditors respectively;" and if the writings have been accidentally lost, this text governs the decision of such a doubtful case. Again; a tree has been pledged with its fruit at the same time *to two creditors* by some man *in person* or through his son, and debts have been contracted with two persons; one of those creditors has enjoyed the produce of the tree, but the other has delayed occupancy to display his own generosity, and the parties are not aware of each other's loan and occupancy; in such a case also, the mortgage is valid in favour of him who first obtained possession. In this case there is no question on the priority of hypothecation; but if the witnesses prove that it was first pledged to one creditor, though last possessed by him, and there has been no neglect on the part of any one, that pledge belongs to him to whom it was first hypothecated. This, however, is not the purport of the present text. Should a thing be first mortgaged to one creditor but neglected by him, and be afterwards mortgaged to another creditor and possessed by him, and the first creditor claim possession at a subsequent time, in that case the pledge belongs to him by whom it was first possessed, though he be the last creditor. This and other points may be reasoned.

If the priority both of mortgage and possession be doubtful, a text cited in the *Retnácara* and *Viváda Chintámeni* directs the decision of the case.

CXXXIII.

Smriti:—By two creditors claiming the pledge *on the grounds of poſſeſſion* for an equal time, it ſhall be ſhared equally; and the ſame rule is declared in the caſes of a gift and a ſale.

The pledge ſhall be equally taken, that is, in equal ſhares, by both mortgagees; and their ſhares ſhall be proportioned to the amount of their reſpective loans. For example: the firſt debt amounts to a hundred *ſuvernas*, the other debt to fifty *ſuvernas*, and the mortgage conſiſts of one village; in that caſe, ſince a partition muſt be made between the two creditors, therefore dividing the land *or rent* of the village in equal portions with the debts due to thoſe creditors, ſhares ſhould be given to each in proportion to their reſpective debts: and this ſuppoſes debts of the ſame nature; but if they be of various natures, the amount muſt be computed from the value which the things bore at the time when the debts were contracted.

In the *Vivāda Chintámeni* the text is read, "if both have poſſeſſed it quietly for an equal time, it ſhall remain in their joint poſſeſſion." BHAVADÉVA concurs in this reading.

And this is nearly *but not ſtrictly poſitive*. When ſeen proof, *or evidence*, in favour of both parties is equal, a deciſion may be grounded on unſeen proof, *or mental conviction*. MISRA.

If the ſeen proof, that is wordly or popular proof, ſuch as poſſeſſion or the like, by which, in a caſe of diſpute, the matter might be determined in favour of one party, be equal, a deciſion may be grounded on unſeen argument, or *due* conſideration *of the credibility of the evidence*. When therefore the priority of mortgage and poſſeſſion is doubtful, a deciſion ſhould be formed on conſideration *of circumſtances*. If the rights of both be on any account undiſtinguiſhable, equal ſhares ſhould be aſſigned: and this is almoſt expreſsly declared. Such is MISRA's meaning. BHAVADÉVA concurs in that opinion: and it is reaſonable; for ſuits ſhould be decided by the king with due conſideration of the courſe of things. But that is a remote affair, which cannot be aſcertained by the king; Sages have therefore delivered a rule of deciſion.

decision. Yet, if any one can ascertain the matter through investigation guided by profound justice, why should recourse be had to equal participation or the like?

"In the case of a gift;" if one thing be given to two persons, the same rule of decision, according to actual possession, is declared in that case also by a text which will be quoted ("*even* in immoveable property a title is gained by *long* possession, and lost by *silent* neglect*). The same decision should also be given in the case of a sale; for there is no difference in the devesture of property by gift or sale. But when the same thing has been sold to two persons, and priority of time being proved, one of them is entitled to the thing, and the other not entitled to it; he who does not obtain the commodity sold, shall recover the price from the seller: if both are entitled to receive shares of the commodity sold, half the price paid by him and half the commodity shall be the share of one, and the other half of the commodity with half the price shall be the share of the other. This shall be considered as the rule of decision.

If both equally have, or have not, possessed the thing, and there have been no neglect on either part, and the priority of mortgage be doubtful, a text of law, cited in the *Retnácara*, propounds a decision on the desparity of written and verbal evidence.

CXXXIV.

Smriti †:—If a pledge, a sale, or a gift of the same thing be *alleged to be* made before witnesses *to one man*, and by a written instrument to *another*, the writing shall prevail *over the oral testimony*, because one contract only is maintained.

If one contract be attested by witnesses, and the other be authenticated by an attested writing, the attested writing shall prevail; that is, it shall establish the mortgage. "Because one contract only is maintained;" because the contract with one man only is maintained by the writing produced. The *Retnácara*.

Conse-

* Attributed to VRIHASPATI. See Book V. v. 384.

† Attributed to VRIHASPATI.

Consequently the joint evidence of a writing and witnesses is exclusive, and verbal evidence singly must be excluded, because one contract only is maintained in consequence of the writing produced. A pledge has been given before witnesses to one man, and with a written instrument to another, but both have possessed the thing; after a few days a contest arising thereon, the pledge authenticated by a writing is alone valid. The text (CXXXIV) is considered in the *Retnácara* as conveying that sense. Again; the owner has delivered a pledge to one man with an instrument in his own hand-writing, unattested, but not extorted by force, and to another before witnesses; even there also the writing shall prevail. The reason of it is, that the depositions of witnesses may possibly be false.

But Heláyudha says, if there be no occupancy, but a writing exist duly attested and so forth, the writing shall prevail, because it is the best evidence of a transaction; it shall establish the mortgage. It is hereby intimated, that, if there be written and verbal evidenee, a mortgage is not of course invalid for want of occupancy. That opinion is not admitted in the *Retnácara*, for it is incompatible with the text of Vrĭhaspati (CXXVI). Yet, in fact, this text is an answer to him who should affirm, on a hasty consideration of the text of Vrĭhaspati, that a pledge is invalid for want of possession, in a case where the thing has not been possessed, but where no neglect is imputable to the pledgee. For instance, where a pledge or other contract has been made by an attested written instrument, the writing shall prevail; that is, it shall establish the mortgage. Such is Heláyudha's meaning, and that should be considered as admitted in the *Retnácara*, as has been already stated more than once.

A pledge is only lost under the text, "a house and the rest are destroyed by neglect, &c." (CXXVII). Forfeiture of property by silent neglect occurs in cases of gift and the like. So in the present case also, the pledgee is prevented from obtaining possession in consequence only of his silent neglect. Else, we think, a gift made for the benefit of the donee under the text concerning gifts, "in his mind intending the donee, let him cast water on the ground;" would be void, if the donee, through ignorance, did not immediately take possession.

This must be understood of two contracts of the same nature.

 But

But for contracts of various natures opposed *to each other*, the rule of decision will be delivered under the title of Relative Force of Contracts.

If neither party have decisive possession, and no neglect be imputable to either party, but both have writings, and those writings be attested, the following texts of law, cited in the *Retnácara*, propound a special decision.

CXXXV.

*Smriti**:—But if a man first mortgage land without noticing all *circumstances*, and afterwards mortgage it with express description by name *and the like*, that writing which contains an express distinction shall prevail.

2. If a field, or a house, be described in a written instrument by its limits, and if villages and the like be *so* described, the contract is valid.

3. When a distinction is expressed in a writing to one man, and no distinction to another, the express distinction, says CÁTYÁYANA, shall preponderate.

In the first text it is ordained, that, if a writing be delivered to the first creditor in this form, " I mortgage so much land to thee, and receive a loan of a hundred *suvernas*;" and if it be mortgaged to the last creditor by a writing in the form directed by YÁJNYAWALCYA as above mentioned, inserting the name of the lender and of the borrower, and so forth; then the mortgage is valid in favour of the last creditor.

The sense of the second text is this: if a written instrument, specifying the limits, be delivered to one man in this form, " this field measured by four hundred cubits, and extending east and west from such a pond to such a mango tree, and north and south from the land of such a person to such a river, is mortgaged

* Attributed to CÁTYÁYANA.

gaged to you ;" and if it be mortgaged to another by a writing in this form, " this field is mortgaged to you ;" the field conveyed by the inſtrument which ſpecifies the limits acquires validity, that is, it becomes a valid pledge : and ſo of a houſe, a village, or the like. Or " villages and the like" may be thus expounded : the creditor's village ; the village in which the creditor reſides, occupying a dwelling-houſe, land, and the like : that in which the debtor reſides ; and that in which the field is ſituated : if thoſe villages be deſcribed. Under the words " and the like" are comprehended the names of fathers and ſo forth as directed by YÁJNYAWALCYA, and all other particulars of places and the like as required by local uſage.

By the third text this meaning is denoted : to one man the mortgager delivers a written inſtrument in this form, " the land " ſituated in ſuch a village, extending from ſuch a boundary to " ſuch a boundary, and belonging to me YAJNYADATTA, is " mortgaged to thee DÉVADATTA ;" to another he mortgages land in another form, " this is addreſſed to CHAITRA ; the field " belonging to me YAJNYADATTA, ſituated in ſuch a village, " extending from ſuch a boundary to ſuch a boundary, and which " was obtained by favour of the king, in conſequence of great " ſervices rendered to him, is mortgaged to thee ;" a diſtinction being thus expreſſed, that is, the land being thus particularly deſcribed, the writing which contains an expreſs diſtinction, ſpecifying the land obtained by favour of the king, ſhall preponderate ; reſiſting the other mortgage, it ſhall maintain the mortgage it conveys. Or the third text may be conſidered as intended to enforce the ſenſe of the former texts.

From the expreſſion " preponderate" it follows, that the other is not preferable. Conſequently, when there is no contradiction, but one inſtrument only expreſſes the name, boundaries and other diſtinctions, the *other* inſtrument is ſufficient evidence, if the limits and other particulars can be aſcertained in any other mode. This is alſo admitted by CHANDÉSWARA, for he delivers this gloſs, " under theſe texts, if the mortgage be made to one man in a general form, and the ſame thing deſcribed by name be mortgaged to another ; then, if the contracts be incompatible, that which expreſſes a name and other diſtinctions ſhall prevail." If ſuch were not his meaning, he would not have added " if the contracts

contracts be incompatible ;" he would have only ſaid, the mortgage not deſcribed by name and other diſtinctions ſhall not prevail. This we hold reaſonable.

Occupancy prevails over verbal and written evidence ; but, if poſſeſſion be equal, the deciſion muſt be argued from the diſparity of the writings. If theſe alſo be equal, participation is reaſonable. No one has directed a deciſion on the diſparity of verbal evidence. In ſupport of theſe opinions, it is proper to adduce the text above cited (CXXXIII).

All this is enjoined, *but not inflexibly*. Through ignorance or the like, the writing has been delivered to the firſt creditor in ſome *irregular* form, and he has not ſilently neglected the pledge ; if all the circumſtances be fully aſcertained by the king or arbitrators from the evidence of neighbours, and if a writing in due form agreeable to law and uſage were delivered to the laſt creditor, ſtill it is argued by ſuch men as we are, that the hypothecation to the firſt creditor is valid ; for theſe texts of Sages are rules of civil law. Accordingly, after citing the text (CXXXIII), MISRA adds, this is enjoined, *but admits exceptions*.

If a mortgage deed, *irregularly* drawn by a perſon inexperienced in ſuch affairs, ſhould happen not to be otherwiſe proved authentick, the mortgage deed in favour of a crafty perſon might prevail ; would not failure of juſtice be therefore imputable to the king for an untrue deciſion, *though* grounded on a legal rule? None could be imputed ; ſuch a deciſion is the conſequence of particular circumſtances. When the day, lunar aſteriſm, and ſign, in which a man was born, are unknown to aſtrologers, as the purpoſe is accompliſhed by aſſuming the ſign from the firſt ſyllable of his familiar appellation ; (for inſtance, À and LÁ *ſuggeſt* the conſtellation of the Ram ; and ſo forth*:) ſo there is no failure of juſtice in *reſorting* to this *expedient in a doubtful caſe*. However, after much inveſtigation, throwing the load on the ſupreme ruler, a deciſion ſhould be made with due conſideration of the *general* conduct of both parties. Accordingly *the author of*

* In drawing the horoſcope of an infant, the lunar aſteriſm under which he was born guides the ſelection of his name ; for inſtance, if he was born under *Aſwinì*, a name is ſelected beginning with CHA, CHE', CHO', or L'A. But in drawing the horoſcope of a man, whoſe birth-day is unaſcertained, the name ſuggeſts the conſtellation.

of the *Retnâcara*, citing the following text (CXXXVI), and expounding it, "if a man, mentally intending a particular thing, pledge his property not exhibited, nor precifely defcribed, and confequently as imperceptible as the fubtile element, it fhall not be confidered as a definite pledge;" adds, this is made evident by the fubfequent text (CXXXVII): and if indefinite hypothecation be practifed in certain inftances, poffeffion may be granted by a fpecial rule without *valid* hypothecation.

CXXXVI.

Uncertain:—If a man pledge his property unexhibited, and undefcribed as to its nature, and confequently imperceptible like the fubtile element, that fhall not be confidered as a definite pledge.

CXXXVII.

Uncertain:—Whatever then belonged to that *debtor*, the creditor may fuppofe defcribed *by the contract*.

Some explain the term, 'unknown,' *inftead of* "*unexhibited*," juftifying the interpretation from the fenfe of the verb *vid*, know: that thing, which, being undefcribed as to its nature, is not known or afcertained. It is not certainly defcribed by its limits, the village in which it is fituated, and other diftinctions; it is therefore fimilar to the fubtile element, equally invifible and imperceptible; and confequently fhall not be confidered as *fufficiently* definite. *For example;* "a field meafured by a hundred cubits is mortgaged to CHAITRA;" it is not thereby particularly known where and of what defcription that field is. How fhould a man fo mortgage land? The commentator explains it; "mentally intending *a particular field*;" indicating it by a general defcription, but not actually fhowing it. "Whatever then belonged to him" (CXXXVII); whatever belonged to the debtor at the time of making the hypothecation, might, through excefs of confidence, or unguarded ignorance, be fuppofed by the cre-

 ditor

ditor *pledged to him*. Whatever the creditor therefore occupied as the intended pledge, would be merely held under the authority of practice, to maintain the agreement inviolate. They thus expound the glofs of the *Retnácara*, "If indefinite hypothecation, &c."

CXXXVIII.

Smrĭti, * cited in the *Retnácara* :—Should the creditor, againſt or even without the aſſent of his debtor, poſſeſs himſelf of more *land or other* property than was expreſsly mortgaged, he ſhall pay the firſt amercement, and the debtor ſhall receive back his whole pledge.

When a field meaſured by four hundred cubits has been mortgaged, ſhould the creditor annex to it another adjoining field, and forcibly poſſeſs himſelf of it, that creditor ſhall pay the firſt amercement, namely, the amercement firſt directed, which Menu thus propounds, "Now two hundred and fifty *panas* are declared to be the firſt *or loweſt* amercement." To explain the ſenſe of the text, this obſervation is made reſpecting fines. Chandéswara thus comments on the text; "if the creditor forcibly annex to the pledge more land or other property than was expreſsly mortgaged, and poſſeſs himſelf of it, he ſhall be fined, and the mortgager ſhall receive back the land or other property mortgaged, without paying the ſum due."

Conſequently the debt, though lent by the party himſelf, is forfeited by reaſon of an offence conſiſting in encroachment on land exceeding the mortgage. But the debtor ſhall not receive the value of what has been previouſly obtained by enjoyment, ſince no text ordains it. Yet, if the debt be not diſcharged from the uſe of more land than was mortgaged, the mortgager ſhall *nevertheleſs* recover his pledge without diſcharging the debt; elſe the terms of the text, "the debtor ſhall receive back his whole pledge," would be unmeaning.

Here it ſhould be remarked, that if a loan be obtained on this condition,

* Attributed to Ca'tya'yana.

condition, propofed by the borrower to the lender, "be this field pledged to thee; the pledge ſhall be redeemed after four years, on the feventh day of the month of *Bhádra:* if I do not then redeem it, the pledge ſhall become thy abfolute property;" the mortgage is not ufually foreclofed, even though the debtor fail in his agreement. If a covetous creditor, reflecting on this local ufage, fay, "give a bill of fale;" and a neceffitous borrower, to obtain the loan, execute a bill of fale, but infert as a date the future month and year intended by him, and fpecify in writing that the price received ſhall bear intereft to that time; and if the debtor occupy the land until the ftipulated period expire; is a contract in this form a mortgage or not? It is anfwered, fince a bill of fale is executed, it is a fale and not a mortgage. Does the fale take place immediately, or on the future day fpecified in the writing? Not immediately: for, if the fale took place immediately, the debtor could not repay the price borrowed, and recover his pledge on a fubfequent day. Nor can that be deemed admiffible; for it would be inconfiftent with practice. Neither is the fecond fuppofition true; for, fince the vender does not intend an immediate fale, his property is not devefted. Nor ſhould it be affirmed, that the vender muft intend a fale on the day when the writing is executed; for the borrower cannot be fuppofed to confent to a fale inconfiftent with his purpofe. On this point it is faid, the fale is concluded on that very day when the vender receives the price; but property is not immediately devefted. Yet the period, contemplated in the vender's actual intention at the time of the contract, devefts the property of the original owner. Or the promife of a future fale is clearly conveyed by the writing then executed; and the borrower, confequently bound by his agreement, muft confent to the fale; elfe he would be puniſhed, and held guilty of a moral offence. Therefore do good men execute fuch bills of fale.

On this a queftion arifes: if the contract were executed when four thoufand years of the *Cali*-age were expired, and dated in the four thoufand and fifth year; ſhould the borrower or witneffes die in the interval, the writing being infufficient evidence, the money lent might be irrecoverable; and how could a mortgage of the land be alleged? That ſhould not therefore be practifed. Yet, in fact, fince many excellent perfons do fo proceed,

 arbitrators

arbitrators by ſome means admit the writing, becauſe ſuch current practice is remarked. But, if the writing be fully proved, it is a valid bill of ſale. Should the borrower or his ſon be unable to diſcharge the debt in the interval, the ſale muſt be acknowledged by the ſon, becauſe it was promiſed by his father. Elſe he would be guilty of a great offence in violating his father's engagement: and the king ſhould animadvert on it. But, if he can diſcharge the debt within the period, the ſale is not valid; for the borrower then aſſented to the deveſture of property, concomitant with failure in payment of the debt.

If a borrower execute a mortgage deed for a limited time, and alſo a bill of ſale dated on a future day, there would be no difficulty in recovering the money lent. This is remarked on the preſcriptive uſage of good men; but it has not been expreſsly noticed by any author. On the contrary, if a pledge be given upon this condition, "ſhould the debt be undiſcharged on a certain day, this pledge ſhall become thy abſolute property," then, if the pledge be not redeemed, that pledge ſhall belong to the creditor as has been more than once declared, and that alone is ſuggeſted by the texts of Sages.

It may be here remarked, that when a loan is made on a pledge received, the pledgee ſhould deliver a written acknowledgement to the debtor; elſe the creditor, enjoying the pledge, might affirm, after a conſiderable lapſe of time, "this has been poſſeſſed by me twenty years, and is ſolely mine." As a written contract relative to tillage is both given and received by the cultivator and landlord, *ſo ſhould mutual agreements be delivered in this caſe alſo.* Accordingly "mutual" is ſpecified in the text of VRĬHASPATI (XII).*

On

* The compiler takes occaſion to relate an antient tale. A borrower, pledging a valuable veſſel through the medium of his own ſervant, and executing a written inſtrument, contracted a debt. Afterwards, the ſervant being dead, the creditor told the debtor, who offered to redeem the pledge, "the pledge has been already redeemed by thy ſervant." In this conteſt the debtor was caſt by many arbitrators. He afterwards truly repreſented the whole circumſtances to a certain king, and that king underſtanding the caſe, called the creditor, and having liſtened to his narration, ſhowed him great courteſy. The king, having aſſumed the character of a friend, took the man's ring under pretence of viewing it; at that moment a ſervant of the king, previouſly inſtructed, announced to him that his mother called. Seemingly interrupted thereby, he retired to an inner apartment, taking the ring with

On the ſubject of pledges ſomething remains to be ſaid *. In fact a pledge delivered for uſe is a pledge to be uſed, and a pledge delivered for confidence only is a pledge for cuſtody. The text of MENU (v. XCI) concerns a pledge for uſe; his text (v. LXXXVIII) muſt relate to a pledge for cuſtody, ſince it expreſſes "without the conſent of the owners;" his text (v. LXXXVII) regards a pledge for cuſtody. Conſequently, ſince the uſe and profit of the pledge is the only intereſt in the caſe of a pledge to be uſed, intereſt at the rate of an eightieth part is prohibited. Should a pledge for cuſtody be uſed, the uſe of it not being forbidden by the owner, half the intereſt is forfeited; but if the uſe of it were forbidden, the whole intereſt ſhall be forfeited. The ſame meaning ſhould be alſo attributed to the text of YÁJNYAWALCYA (LXXXIV): if a pledge for cuſtody be uſed, the forfeiture of intereſt is equitable, ſince *the uſe of it* had not been allowed in place of intereſt; but if a beneficial pledge be uſed, there ſhall be no intereſt, that is, no intereſt at the rate of an eightieth part and the like. Since the ſingle word "intereſt" may be connected with both phraſes (LXXXIV), there is no objection to the admiſſion of both meanings. Such is the opinion of CULLÚCABHATTA.

That chattel, from the uſe of which no loſs ariſes, is a pledge which may be uſed; that is, one, the uſe of which cauſes no ill: for participles of this form ſignify what may be done without cauſing any ill; as in the example, "a prieſt and a king are never to be ſlighted." Any other pledge is a pledge to be kept, that is, one which muſt be kept or preſerved. Hence SÚLAPÁNI's gloſs delivered in the *Dípacalicá* (where a pledge for cuſtody

with him as it were by miſtake. Thence he ſent a ſervant with the ring to the creditor's ſteward: "Unleſs the veſſel be inſtantly produced, thy maſter's life is forfeited, this ring is my token;" hearing this, the ſteward delivered the veſſel to the meſſenger. Having received the veſſel in the inner apartment, the king put betle in it, and called the debtor. He, attending and ſeeing the veſſel, with downcaſt look ſaid, "I have offended, my ſervant muſt have been diſhoneſt; without my knowledge he has ſold this veſſel; elſe how could it be in thy poſſeſſion?" The king, having aſcertained the weight and value of the veſſel by means of artiſts, impoſed a fine on the creditor, delivered the pledge to the debtor, and directed payment of the debt to the creditor. If there had been a writing, adds the compiler, no ſuch diſpute could have exiſted.

* In the original, theſe remarks are ſubjoined to the laſt chapter on the Recovery of Debts.

custody is explained a pledge to be kept, such as clothes, ornaments or the like; and a beneficial pledge is exemplified by an ox or the like;) is fully justified: and the remark of CHANDESWARA, in his gloss on the rule of VISHNU (LXXXII), which restricts the word "pledge" to a pledge for custody only, is pertinent: else, since MENU (XCI) also declares, that there shall be no *other* interest when a beneficial pledge is used, the restriction of the term to a pledge for custody, as inferred by CHANDÉSWARA, would be irrelevant. Thus likewise the gloss of MISRA on the text of CÁTYÁYANA (LXXXIX) is fully justified, where, after observing, that in every case where the pledge is used against the will of the owner, the whole interest is forfeited; and when a slave or the like, being pledged, is employed, half the interest, he adds, but if a pledge for custody be used, the whole interest shall be forfeited. Else, since it is reasonable that all *other* interest should be foregone, when a pledged slave or the like has been delivered for use, the forfeiture of half the interest would be irrelevant. But if such a slave or the like be delivered for confidence only, the pledge is for custody; and if used, the whole interest shall be forfeited: and hence that explicit statement of the distinction arising from this text was proper.

This opinion of some lawyers appears correct: a debtor, borrowing five pieces of money, has pledged a copper caldron worth ten pieces; the creditor uses it without, though not against, the assent of the owner, during five years from that date; and the vessel is not thereby totally spoiled, but, being much worn, is reduced to half or a less portion of its original value: in such a case the forfeiture of half the interest *only* would be inconsistent with common sense. The law has been thus explained at large.

But others expound the phrase, "on its loss or destruction," which occurs in the text of NÁREDA (LXXXI 3), 'should the lender neglect the preservation of the pledge:' consequently, should the care of the pledge be neglected by the creditor, and the pledge nevertheless be fortunately uninjured, still the interest is forfeited. For example; a cow is pledged to a *Yavana* by a foolish debtor, and that ill disposed creditor of the *Yavana* race neither uses the cow, nor feeds her at his own house; but that cow grazes night and day in the forest, and, being destined to a long life, survives; not being bitten by a snake or the like, or

being

being bitten but cured by ſome traveller: in ſuch a caſe, *the intereſt is forfeited.*

VIJNYÁNÉSWARA conſiders the text of MENU (v. XCI) as relating to a pledge delivered for uſe; and the text of YÁJNYAWALCYA (LXXXIV), and another text of MENU (v. LXXXVIII), as relating to a pledge not delivered for uſe. But if a pledge delivered for uſe be damaged, intereſt ſhall be forfeited, under the precept of YÁJNYAWALCYA, "nor *any intereſt*, if a pledge for uſe be damaged" (LXXXIV). "A pledge ſpoiled ſhall be made good;" if a pledge not delivered for uſe be damaged in a ſmall degree or the like, it muſt be repaired, and thus reſtored in its former condition; ſhould it have been uſed, intereſt ſhall be forfeited. If a pledge delivered for uſe be damaged in a ſmall degree or the like, it muſt be repaired, and reſtored in its former condition; if it bore intereſt, that intereſt ſhall be forfeited. Should a pledge be utterly ſpoiled or deſtroyed, an equivalent muſt be given, or the price of the pledge muſt be paid, or the principal ſum ſhall be forfeited.

CHAP. IV.

ON

SURETIES.

CXXXIX.

Cátyáyana:—Neither the master *of the lender*, nor his professed enemy, nor an agent of his master, nor a prisoner, nor a criminal amerced, nor one whose character is ambiguous,

2. Nor a coheir or joint-tenant *with either party*, nor an intimate friend, nor a pupil, nor a servant of the king, nor a religious anchoret,

3. Nor a man *reputed* unable to pay the sum to the creditor, or a fine of equal amount to the king, nor one whose father is living, nor one who is guided solely by his own froward will,

4. Nor a man who is not well known, should ever be accepted as a surety for any purpose.

A man confined by the king for some offence, becoming surety for another, might *afterwards* plead, "how can I enforce payment of the debt?" Or, *it may be objected*, how could he attend to that matter when contested? A prisoner therefore should not be accepted as a surety. "A criminal amerced;" that is, one on whom punishment impends: else, since almost every person may casually become liable to punishment, none could be accepted as sureties: but this criminal is refused because the fine impoverishes him, and he is therefore unable to make good the debt. Thus some interpret the text; but that is wrong, for the same sense is also conveyed by the words "a man unable to pay the

the ſum to the creditor." Some again hold, that a criminal amerced is refuſed as a ſurety, through apprehenſion of his ſinful miſconduct. But, in fact, future impoveriſhment is ſuggeſted by the term explained "a criminal liable to amercement;" ſince he is not at preſent reduced to indigence, there is no vain repetition.

"One whoſe character is ambiguous;" ſo explained in the *Retnácara:* that is, a man of ambiguous character. That gloſs intends one whom honeſt men ſuſpect to be ill diſpoſed. If his evil diſpoſition be aſcertained, ſurely *he cannot be accepted as a ſponſor*. Others expound the term, 'accuſed:' they ſuppoſe one whom any perſon arraigns in a public aſſembly, alleging that he is addicted to the uſe of intoxicating liquors.

"A coheir;" a joint-tenant with the creditor or debtor.

The *Retnácara.*

The notion is this; if the creditor accept his own coparcener as a ſurety, does he not make himſelf ſurety? If he accept the debtor's coparcener as a ſurety, does he not make the debtor ſurety for himſelf? A text of YÁJNYAWALCYA to the ſame purport will be cited. "A friend" of the creditor *muſt not be accepted*, leſt friendſhip be violated.

"Pupils," *literally* apprentices; diſciples. The *Retnácara.* The reaſon is, leſt affection be diverted. But the author of the *Mitácſhará* reads *atyantaváſinah* inſtead of *anténiváſinah*, and expounds it 'perpetual ſtudents in theology.'

"A ſervant of the king;" one employed by the king, his miniſter, and the reſt. On the reading, "nor the king, nor one employed in his affairs," king is illuſtrative of a general ſenſe: it would be ſuperfluous for the king or his miniſter to become a ſurety; becauſe the king, by *the* nature *of his truſt*, is *an univerſal* ſurety; and his deputed miniſter or other officer is certainly ſo likewiſe; and a ſervant of the king ſhould not be accepted as ſurety, leſt he avail himſelf of his ſuperior power. "Religious anchorets" ſhould not be accepted as ſureties, becauſe they are venerable, and are not capable of civil tranſactions. The want of independent property is the objection againſt one whoſe father is living.

"One who is guided by his own will;" who is ſolely guided by his own froward will, and not by any conſideration of circum-

 ſtances:

ſtances: conſequently his incapacity for civil affairs is the objection againſt him.

"A man *reputed* unable to pay the ſum to the creditor;" if he be unable to pay the ſum to the creditor, for what purpoſe ſhould he be accepted as a ſurety? "Or a fine of equal amount to the king;" if the creditor accept as a ſurety a man able to pay the ſum to him, but unable *alſo* to pay a fine to the king; then, ſhould he become liable for a fine to the king in conſequence of ſome offence, and be therefore unable to pay both ſums, the creditor could not recover the whole ſum from him: for this reaſon he ſhould be refuſed. Thus ſome expound the text; but in fact this text is not reſtricted to loans, for it expreſſes generally "for any purpoſe." Conſequently, when a ſurety is required by the king, he ſhould not accept one who is unable to pay a fine: and that is merely illuſtrative; a man unable to produce the party, ſhould not be accepted as ſurety for appearance and ſo forth. If a creditor accept as a ſurety "one who is not well known," then, after a lapſe of a few days, when he has gone to another place, and the debtor has abſconded, from whom could the creditor recover the ſum? The creditor ſhould therefore accept, as a ſurety, none but a man who is well known.

He who becomes a ſubſtitute for another *(pratibhavati)*, is a ſurety *(pratibhû)* or bondſman. By parity of reaſoning, ſimilar ſureties ſhould be required in other caſes. Conſequently, from the full ſenſe of the law, he only ſhould be accepted as a ſurety *for any purpoſe*, from whoſe ſuretiſhip no breach of reſpect, natural affection, or tender regard, need be apprehended; and from whom, or from the debtor, the ſum may be ſubſequently recovered.

CXL.

YÁJNYAWALCYA:—It is declared, that brethren, huſband and wife, father and ſon, cannot become ſureties for each other before partition, nor reciprocally lend *their joint property*, nor give evidence for each other *in matters relating to the common ſtock*.

Brothers

Brothers and the reſt cannot, before partition, become bound to, or for each other, and ſo forth. Before partition, a man ſhould not make a loan, taking as a ſurety his own brother, or the brother of the debtor: nor ſhould he make a loan to his own undivided brother; for all that belongs to him belongs to his brother: how then can it be a debt? It will be declared, that his brother has no title to what is acquired by the man himſelf: may not therefore his own acquired wealth be lent to his brother? *The anſwer is*, why ſhould his brother borrow money from him, ſince his food and other wants may be ſupplied from the joint eſtate? If he need it for religious occaſions, why ſhould he not uſe the joint property? *If he wiſh to adventure it* for increaſe of wealth, why ſhould he not improve the joint eſtate? If he require it for the enjoyment of wreaths, ſanders wood, fine cloth, and the like, that may be ſupplied out of joint property; for the law has not forbidden any uſe of common property.

But if any one reſolve in his own mind, "I will perform a religious act on my own ſeparate funds, and I alone ſhall obtain the benefit of it;" or if his brother forbid ſuch expenditure of the paternal wealth; in ſuch caſes, a man intending to dig a pond, or to perform a ſolemn ſacrifice, or the like, out of property acquired by himſelf, but *finding* ſome part of his own ſeveral property unavailable, may borrow from his brother money acquired by *that brother* himſelf: why is a loan forbidden before partition? It ſhould not be objected, that a religious act, even though performed by one brother on funds acquired by himſelf, is the act of both undivided brothers, under a text which will be quoted (Book V, v. CCCLXXXVIII); and therefore money received for that purpoſe from a brother, even though it were acquired by himſelf, is no debt, and ſhall not therefore be repaid. Another text* declares the participation of all brethren in that religious act only which is performed, with the aſſent of all, on funds common to all; and the former text has virtually the ſame import.

* A text of MARÍCHI is incorrectly cited in this place. After conſulting the *Dwaita paris'iſhta* of CÉSAVA, MISRA, and *Suddhi vivéca* of RUDRADHARA, I thus tranſlate the text with the preceding verſe: "The father being dead, his obſequies muſt be carefully performed by his ſon; but if there be many ſons of the father reſiding in the ſame place, what is done by the eldeſt alone, with the aſſent of all, and out of the common ſtock, ſhall be *conſidered as* the act of all."

import. That a debt may be contracted with an undivided brother, cannot therefore be disputed.

Again: a man reflecting, "if I obtain profit on joint property, another brother will also have a title to that profit," only lends at interest his own property acquired by himself, or he conducts commerce on that capital; in such a case, a small part of his several property being then unavailable, he borrows from his undivided brother money acquired by that brother himself: here, also, what should prevent him? So if another brother tell one who dissipates the joint property for the enjoyment of wreaths, sanders wood, fine cloth, and the like, "gratify thy wish for enjoyment in proportion only to *thy share of* the wealth," and if he, being thereby restrained, supplies his enjoyments out of wealth acquired by himself; but, some part of his several property being then unavailable, borrows from an undivided brother money acquired by that brother himself: here, again, what is there incongruous? Consequently a debt contracted with an undivided brother for the three purposes of spiritual benefit, of wealth, and of gratification, is in reason valid.

Yet YÁJNYAWALCYA forbids it. Can such a rule be demonstratively true, that, under the text of YÁJNYAWALCYA, a debt may not be contracted with an undivided brother, though in reason such a debt be valid? There is no objection to explain "while undivided," while the property *lent* is undivided: for the sense *must be this;* paternal wealth and the like, and what has been gained by a common exertion, may not be borrowed from undivided brethren.

So, if a religious act or the like be undertaken on a man's own several property, and if a small sum be deficient, and a debt be therefore contracted with another person, an undivided brother may be his surety or his witness: but if he contract a debt for the maintenance of the united family, an undivided brother can neither be surety nor witness; for he also is liable to the payment of the debt: and if this text be adduced by authors to guide the decision when a doubt arises whether a partition have been made, still that supposes either paternal wealth or property acquired in common. This will be discussed in the *fifth* book, On INHERITANCE, under the head of Ascertainment of Partition: and this text has the same import with that of CÁTYÁYANA (CXXXIX 2.)

CXXXIX 2.) "Nor a coheir or joint tenant," as has been already noticed.

There can be no partition between hufband and wife (Book V. v. 89). The text of YÁJNYAWALCYA (Book V. v. 83) intends only a provifion for fubfiftence, not partition: were there partition, wives would become independent, and it would contradict the text of 'APASTAMBA (Book V. v. 89). Property therefore being common to hufband and wife (Book V. v. 415), furetifhip and the reft are forbidden, fo far as concerns the general eftate of the hufband; but a contract of debt or furetifhip may exift in refpect of other wealth, fuch as the feveral property of a woman: for example, the hufband may borrow from his wife her own feveral property. So if the wife defire to fupport her own brother or other kinfman out of her feveral property, and no part of that property be then available, a debt muft be contracted; when that debt is therefore contracted with another perfon, her hufband may become either furety or witnefs: for YÁJNYAWALCYA (CCVII) denies the abfolute neceffity of a hufband paying fuch a debt. By the hufband only, can no loan be made to his wife; for the text above cited (Book V. v. 415) declares the wife's property in the hufband's wealth only. Such is the interpretation according to ancient authors.

But VÁCHESPATI BHATTÁCHÁRYA does not acknowledge the property of the wife in her huband's wealth. There is not, in his opinion, any objection to a gift made by her; however, he confiders the hufband and wife as never undivided in *refpect of* property. This may be admitted; but the author of the *Mitácfharâ* admits partition between hufband and wife, and acknowledges the wife's property in her hufband's whole eftate; for, in his glofs on the text of 'APASTAMBA above cited (Book V. v. 89) he fays, "fince MENU and the reft do not deem it a theft if fhe ufe her hufband's property in the entertainment of guefts and eleemofynary gifts, therefore the wife alfo has ownerfhip of her hufband's wealth: elfe it would be a theft." A partition may therefore be made at the option of the hufband, but not at the option of the wife; as will be mentioned (Book V. Chap. ii). The wife's property in her hufband's eftate is thus fhown (Book V. v. 83); partition *in general* is not again denied: and the text, which does deny partition, is expounded as relating to acts

which concern the nuptial fire and the like. But RAGHUNANDANA ſays, " The legiſlator mentions partition between huſband and wife, intending the aſſignment of an equal ſhare with the ſons, by way of proviſion for the wife's maintenance: if that have not been done, teſtimony for each other and ſo forth is forbidden."

CXLI.

NÁREDA:—After partition, but not before it, brothers may become witneſſes or ſureties for each other, and may reciprocally give and receive *preſents, or make contracts with each other: but in regard to property ſeparately acquired, they may do ſo even before partition**.

They may give and receive loans, for the text coincides with that of YÁJNYAWALCYA (CXL). Since there is no ground for ſelection, both delivery and receipt are meant. Or if a man erroneouſly make a preſent, receipt is forbidden; if he erroneouſly take a preſent, gift was forbidden. If the prohibition of receipt be infringed, the benefit of a gift for a religious purpoſe is loſt; if the prohibition of gift be infringed, the thing ſhall not be obtained at a ſubſequent time: hence both are intended.

Again; delivery and receipt may ſignify the delivery of a thing relinquiſhed on a religious account, and the receipt of that thing. If that prohibition be infringed, what moral purity can he acquire by yielding joint property to one of the owners? Or how can the donee forfeit *his ſhare in* the merit of the gift, by receiving his own property, which in reality produces moral benefit common to both owners? Such is the objection *to the interchange of preſents between parceners.*

Under this text (CXLI) the atteſtation of brothers and ſo forth is only proper in matters concerning that property, in reſpect of which they are ſeparate; and it is only improper in matters concerning that property, in reſpect of which they are coparceners.

If one allege in the king's court, " this man is my debtor," and the

* Book V. v. 388, 3.

the other affirm, "I am not his debtor;" that ſuit being tried, if three ſtrangers depoſe to the debt, and ſeven parceners depoſe againſt the debt, the negative plea would prevail by the text of Yájnyawalcya*: to prevent this *circumſtance*, their teſtimony is forbidden. Therefore, ſetting aſide the negative plea, though ſupported by the evidence of many parceners, the debt proved by ſtrangers ſhould be adjudged. "A kinſman might ſpeak *falſely* through the impulſe of natural affection." This and other points ſhould be diſcuſſed under the title of Adminiſtration of Juſtice.

And that (which is ſtated in the text CXLI) *is forbidden* without mutual conſent; but with mutual conſent, even undivided brothers may become ſureties and ſo forth: after partition, they may ſo act even without mutual conſent. The *Mitácſhará*.

Sureties are of four ſorts.

CXLII.

Vrĭhaspati:—Four ſorts of ſureties are mentioned by Sages in the ſyſtem of juriſprudence: for appearance, for honeſty, for paying a ſum lent, and for delivering the debtor's effects.

2. The firſt ſays, "I will produce that man;" the ſecond ſays, "that man is truſt-worthy;" the third ſays, "I will pay the debt;" the fourth ſays, "I will deliver his effects."

3. On failure of their engagement, the two firſt, *but not their ſons*, muſt pay the ſum lent at the time ſtipulated; the two laſt, on default *of the borrowers*, and even their ſons, if they die *and leave aſſets*.

The conſtruction is, four ſorts of ſureties are mentioned in the ſyſtem of juriſprudence. The firſt for appearance, that is, for

* The text at large ſtands thus in the code of that legiſlator: "If the evidence be diſcordant, the teſtimony of the greater number ſhall prevail; if the witneſſes be equal in number, the teſtimony of the virtuous; if virtuous men depoſe two inconſiſtent facts, the teſtimony of thoſe who are moſt eminent by their honeſty."

for producing the party; in ſhort, he is ſurety for appearance. So likewiſe in reſpect of ſureties for honeſty and for payment. "For delivery of the debtor's effects;" for delivery of his aſſets to the creditor. The *Retnácara.*

Thus the creditor ſays, "he will not repay my loan, for he is diſhoneſt; who will obtain the money from him and pay it to me?" In reply, the ſurety for producing the debtor's aſſets ſays, "I will deliver his aſſets." *In* the ſubſequent verſe, *the terms*, "I will deliver his effects," are expounded "I will deliver aſſets of that debtor equal to the ſum lent," that is, effects ſufficient for the purpoſe of payment.

But modern authors expound it, ſurety for the delivery of the debtor's mortgaged property. For inſtance: the borrower contracts a debt on the mortgage of a field, and the creditor aſks "who will deliver to me the produce of that field?" In ſuch a caſe, the ſurety for the delivery of the debtor's effects ſays, "I will deliver his property;" that is, the property of this debtor, namely the produce of the mortgaged field. MISRA.

MISRA contends for another reading, *rĭnē dravyárpanē* inſtead of *rĭni dravyárpanē.* It is explained, for reſtoring a thing lent to be uſed. A thing lent for uſe is any thing which a man aſks and obtains from another, ſuch as ornaments and the like. For inſtance: one ſays, "give me ornaments for decoration on a day of feſtivity at my houſe;" the owner aſks, "if thou do not reſtore them, what ſhall be done? In ſuch a caſe, the ſurety for delivery ſays, "I will reſtore theſe effects." Here, ſince thoſe ornaments are the ſole property of the original owner, there can be no payment; it is therefore ſaid for delivery or reſtoration. Conſequently ſureties for appearance and honeſty may concern a loan for uſe as well as for conſumption: in reſpect of a debt there is alſo a ſurety for payment; and in reſpect of loans for uſe, there is alſo a ſurety for reſtoring the chattel. In caſes of debt, therefore, ſureties are of three ſorts; and there are alſo three ſorts of ſurety for reſtoring a chattel: but generally ſureties are of four ſorts. This gloſs is conſiſtent with the ſenſe *of the text.*

On this we remark, that *rĭnē* is a reading approved by 'SÚLAPÁNI. The conſtruction is, "in reſpect of debts, four ſorts of ſureties are mentioned." When an artiſt is required by the king for

for ſervice during a long ſpace of time, there are only three ſorts of ſureties for him; a ſurety for appearance, a ſurety for honeſty, and a ſurety for work. In ſome inſtances ſureties are of five ſorts, as will be mentioned. But in matters of debt there are only four ſorts of ſurety. The meaning of "ſurety for delivery of effects," muſt be explained according to the modern interpretation, or according to the preceding gloſs.

Here an obſervation ſhould be made in regard to what has been already noticed in the diſcuſſion of Loans ſecured by a Pledge. Some perſon lends money to a ſervant, being told by his maſter, "I will not pay my ſervant's wages unknown to you." It has been ſaid, that in ſuch a caſe the ſervant's maſter becomes a ſurety; and, according to the modern interpretation and the laſt gloſs, he is only ſurety for delivery; but according to other opinions he is ſurety for honeſty. *As* a creditor, relying on ſome perſon's affirmation, "this man is truſt-worthy," lends money to the borrower; ſo, *in this inſtance*, he lends money to a borrower in confidence of recovering the ſum from him, relying on the promiſe, "I will not pay his wages unknown to you." The ſervant's maſter ſhall therefore be compelled to pay the debt, if he falſify his word. But he ſhall only be compelled to pay the amount of the wages, and not the whole debt if it exceed the wages; for the ſervant's maſter only became ſurety for a debt equal to the wages.

The ſecond ſays, "that man is truſt-worthy" (CXLII 2); this form is merely illuſtrative, as has been already noticed. "The two firſt muſt pay the ſum lent on failure of their engagement" (CXLII 3); the two firſt, the ſurety for appearance and the ſurety for honeſty, muſt pay it on failure of their engagement, that is, ſhould the words uttered by them prove untrue. For example: if the ſurety who ſaid "I will produce that man," do not produce him, he muſt pay the debt. So the ſurety for honeſty, who ſaid "that man is truſt-worthy; he is honeſt and will not be averſe from diſcharging the debt;" or, "he will not take refuge with thy profeſſed enemy;" muſt pay the debt, if it be proved that the debtor evades the payment of the debt, is diſhoneſt, or has taken refuge with a profeſſed enemy of the creditor. The ſame muſt be underſtood with reſpect to the maſter's ſervant in the caſe ſuppoſed.

The ſurety for honeſty is belied when the debtor does not pay the

the debt, and that ſurety muſt therefore make it good. It is the ſame in the caſe of a ſurety for payment. Does it not follow, that there is no difference between a ſurety for honeſty and a ſurety for payment? No; they differ in many points. If the ſurety ſaid, "that man is honeſt;" and afterwards, if the debtor, being reduced to indigence by conflagration, by the depredations of robbers, or the like, have no aſſets whatever for the payment of his debts, his honeſty is unimpeached; for *in ſuch circumſtances* there is no ſin in his not diſcharging the debt: the ſurety for honeſty ſhall not in this caſe be compelled to pay the debt. But if the ſurety ſay, "I will pay the debt," then indeed that ſurety for payment ſhall be compelled to pay it. Such is the difference. Again; if the ſurety for honeſty ſay, "that man is wealthy," in ſuch a caſe, ſhould it be proved that he was then indigent, the ſurety for honeſty or truſt ſhall pay the debt, even though the inability of the debtor be the cauſe of its remaining undiſcharged *by him*. But if wealthineſs be proved, and the debtor withhold payment through diſhoneſty or the like, a ſurety for payment would in that caſe be compelled to diſcharge the debt, not the ſurety for truſt. This alſo conſtitutes a difference. There is again a difference in the caſe of the debtor's deceaſe; and various diſtinctions may alſo be deduced from other circumſtances.

In fact, when the ſurety for honeſty ſays, "that man is truſtworthy;" if he punctually paid debts formerly contracted from others without diſpute, and never did a diſhoneſt act, but ſubſequently practiſe knavery in regard to the payment of this debt, the ſurety is not in that caſe amenable; for none can know future events. But, when the ſurety for honeſty ſays, "that man will practiſe no knavery; of this I am well aſſured; confiding in my words, lend him the money without heſitation;" then indeed, ſhould the debtor afterwards practiſe knavery, the fooliſh ſurety muſt pay the debt. If a ſurety affirm, that a diſhoneſt borrower is honeſt, then this ſurety for honeſty is belied and muſt pay the debt. Providing for this caſe, the text of VRĬHASPATI expreſſes, "the two firſt muſt pay the ſum lent."

"At the time ſtipulated" (CXLII); at the term, as ſtipulated *by the debtor*. For example; when the debtor promiſed, "I will diſcharge the debt in ſuch a year and month, on ſuch a day," it muſt be paid on that very day in that month and year.

"The two laſt (the ſurety for payment and the ſurety for delivery), on default;" *they ſhall be compelled to fulfil their engagements*, if they do not ſpontaneouſly pay the debt, or deliver the effects. The *Retnácara*.

Here, "at the ſtipulated term" muſt be ſupplied after the words "pay the debt."

"If they be dead;" literally, without them: on failure of the ſurety for payment and of the ſurety for delivery, in conſequence of their death, abſence, or religious ſecluſion from the world. Conſequently, ſhould a ſurety for appearance or honeſty die or go to a foreign country, his ſon is not bound; but if a ſurety for payment or delivery die or go to a foreign country, his ſon is held bound.

It ſhould be here noticed, that, ſo long as the ſurety for appearence or honeſty be forthcoming, the debt is ſecured by a ſurety, and bears intereſt at the rate of an eightieth part increaſed by an eighth (XXVII). If they die, or go to a foreign country whence their return cannot be expected, the debts are thenceforward unſecured by pledge or ſurety, and bear intereſt at the rate of two in the hundred. But the grandſon of a ſurety for payment or for delivery is not bound *by his grandfather's engagements*, as will be mentioned.

CXLIII.

NÁREDA:—Three ſorts of ſureties, for three purpoſes, are mentioned by the wiſe; for appearance, for payment, and for honeſty:

2. If the debtors fail in their engagements, or if *his* confidence miſled *the creditor*, the ſurety muſt pay the debt; and ſo *muſt the ſurety for appearance*, if he do not produce *the debtor*.

For three purpoſes in reſpect of things, namely for payment, appearance, and honeſty, three ſorts of ſureties are mentioned. What is to be done by them? The Sage declares it (CXLIII 2). "If the debtors fail in their engagements," if they do not diſcharge

charge the debt, "the ſurety," namely the ſurety for payment, muſt pay the debt. "If *his* confidence miſled *the creditor;*" that whereby a man confides, is confidence. If what is meant by that term, namely the confidence of the ſurety for honeſty, produce incongruity, or excite an erroneous notion, (for the word has an inflection which bears a cauſal ſenſe;) that is, if the aſſertion of the ſurety produce error, or in other words if it prove falſe, *he muſt pay the debt.* If the reading be *vibódhité* inſtead of *virṓdhité, it muſt be thus explained;* if confidence, or the notion excited by the aſſertion of the ſurety for honeſty, be miſconceived, or prove contrary to fact; that is, if it prove falſe; or, in ſhort, if the debtor be diſhoneſt; the ſurety, namely the ſurety for confidence, muſt pay the debt. Such is the meaning. "If he do not produce *the debtor in court;*" the text muſt be ſo ſupplied: if he do not compel the appearance of the debtor, the ſurety, namely the ſurety for appearance, muſt pay the debt.

But the ſurety for delivery is not here mentioned; in the text of NÁREDA, therefore, three ſureties only are noticed. The apparent inconſiſtency is thus reconciled, according to MISRA; the text of NÁREDA concerns only ſureties for debts, but the text of VRĬHASPATI concerns both loans for conſumption and loans for uſe; there is not, conſequently, any contradiction. But, according to others, the ſurety for delivery falls under the *general* deſcription of ſurety for payment; for there is no *material* difference between a ſurety for the delivery of mortgaged property or of the debtor's aſſets, and one who has undertaken the payment *of the debt:* entertaining this notion, NÁREDA has only mentioned three ſorts of ſureties. Diſtinguiſhing this form of agreement, "if the debtor do not pay the debt, it ſhall be paid by me," from this form, "obtaining aſſets from the debtor, I will deliver them," or diſtinguiſhing the engagements to pay the money lent, and to deliver the property mortgaged, VRĬHASPATI has diſcriminated the ſurety for payment and ſurety for delivery: there is not conſequently any inconſiſtency. In effect there is no difference of meaning. The text is cited by HELÁYUDHA and CHANDÉSWARA, and is therefore inſerted in this Digeſt, though not quoted by LACSHMID'HARA and others.

CXLIV.

CXLIV.

Yájnyawalcya:—Suretiſhip is ordained for appearance, for honeſty, and for payment; the two firſt *ſureties, and not their ſons,* muſt pay the debt on failure of their engagements, but even the ſons of the laſt *may be compelled to pay it.*

The two firſt, the ſurety for appearance and ſurety for honeſty, muſt pay it on failure of their engagements. Even the ſons of the ſurety for payment may be compelled to pay the debt.

The *Dípacalicá.*

Since the ſon of the ſurety for payment is alone declared liable for the debt, it appears that the ſon of a ſurety for appearance or for honeſty is not liable for the debt. Herein the author of the *Mitácſhará* concurs: but he has delivered this gloſs on the term "honeſty" or truſt; *the ſurety ſays,* "confiding in me, lend him the money; he will not deceive thee, for he is ſon of ſuch a one; his land is very fertile; and he has an excellent eſtate:" and all other circumſtances are *in this manner* almoſt fully particularized. That no real inconſiſtency with the text of Vrĭhaspati exiſts, has been already explained in the gloſs on the text of Náreda.

CXLV.

Cátyáyana:—*Let the king* cauſe ſureties to be given for payment, for appearance, for confidence, *or for honeſty,* for the matter in conteſt, and for ordeal; on failure of their engagements *they ſhall be liable* according to circumſtances.

"For payment;" for the diſcharge of the debt, and for the delivery of mortgaged property and the like. "For appearance;" for producing the debtor. "For confidence;" for truſt: the words are ſynonymous. "For the matter in conteſt" with

with the creditor. "For the performance of ordeal:" that ſurety ſhall be compelled to pay the debt "on failure of his engagement;" or, *in other words*, if the engagement be not performed. Such is the ſenſe, as apprehended by CHANDÉSWARA.

"For the matter in conteſt;" a ſuit being inſtituted by the creditor for the recovery of money from the debtor, he whom the king takes as a ſurety, leſt the debtor or creditor abſcond through apprehenſion of loſing the cauſe, is ſurety for the action, the fourth ſort of ſurety, as *alſo directed* by a text which will be quoted from YÁJNYAWALCYA*. This ſurety ſays, "if that man do not appear to *defend* the ſuit, he ſhall be produced by me;" or he ſays, "I will perform what may be required from that man."

Afterwards, during the procedure, if ordeal muſt be performed by the party himſelf, he whom the king, under the text of YÁJNYAWALCYA, takes as a ſurety, ſuſpecting the creditor's or debtor's wiſh to abſcond, becauſe he perceives the probable detection of his falſehood, is ſurety for ordeal, the fifth ſort of ſurety. He ſays, "when this debtor ſhould paſs ordeal, I will "then produce him;" or he ſays, "I will perform his office." This ſhould be underſtood incidentally in the caſe of a ſurety for the creditor.

This text ſhould be placed under the title of Adminiſtration of Juſtice. It carries an *apparent* inconſiſtency with the text of VRĬHASPATI, where four ſorts of ſureties are propounded. That may be reconciled: the text of VRĬHASPATI concerns debts alone, but the text of CÁTYÁYANA concerns law-ſuits in general; there is no contradiction. Or the ſureties for the action and for ordeal fall under the deſcription of ſureties for appearance, diſtinguiſhed, *however*, by the difference of agreement. Accordingly MISRA ſays, the ſurety for attending the deciſion of the ſuit, and for ordeal and the like, as mentioned by CÁTYÁYANA, is included in the ſurety for appearance and the reſt.

According to the laſt interpretation *of the text of* VRĬHASPATI, conſiſtent with the gloſs of SÚLAPÁNI, "matters of debt"

* Not again cited in this Digeſt. I ſubjoin the tranſlation according to the gloſs of RAGHUNANDANA: "From both parties a ſurety muſt be taken, able to perform the decree *by paying the ſum adjudged, and ſo forth.*"

debt" being there ſpecified, the apparent contradiction is obviouſly reconciled in this mode: in matters of debt there are four ſorts of ſureties, but for law-ſuits *in general* there are five ſorts. Some however hold, that when a ſuit is inſtituted, he who is appointed by the plaintiff or defendant, who is himſelf unable to act, to be his repreſentative for the purſuit or defence, is ſurety for the action. By the nature of the undertaking, if he be caſt, his principal is caſt; and if he prevail *in the ſuit*, his principal prevails. The king ſhould exact from the principal a written engagement in this form, "his ſucceſs or defeat ſhall fall on me."

A written acknowledgment ſhould be executed by ſureties in their own handwriting, or in that of another perſon. In the margin of the written contract of debt, the ſurety may write, "I ſuch a one, ſon of ſuch a one, will produce unto thee ſuch "a one thy debtor, on a certain day, month, and year, (*ſpe-* "*cifying the time* when the debt ought to be diſcharged,) provided "he have not paid the debt before that time; ſhould I fail here- "in, I will myſelf diſcharge the debt with intereſt." A ſurety for confidence ſhould execute a ſimilar obligation, but call himſelf "ſurety for confidence," and after inſerting the name of the borrower, and other particulars, conclude by declaring "that man is honeſt; if this aſſertion prove falſe, the debt ſhall be paid by me." So in the caſe of a ſurety for payment, for delivery, for the action, or for ordeal, the undertaking above mentioned ſhould be duly recorded in writing. By the ſurety for the action, according to the laſt-mentioned opinion, an undertaking may be reduced to writing in this form, "I will anſwer the plea ſo long as the ſuit remain *undecided*." This and other points may be reaſoned according to received practice.

That the debt, not being diſcharged by the debtor at the ſtipulated period, muſt be paid by the ſurety for payment, is evident from the expreſſion "on failure of their engagements." A ſpecial rule is declared in reſpect of a ſurety for appearance.

CXLVI.

CÁTYÁYANA propounds it:—If a ſurety for the

appearance of a debtor produce him not at the time and in the place *agreed on*, he ſhall diſcharge the debt, unleſs he was prevented by the act of GOD or the king.

2. After the time *of difficulty* has paſt, the ſurety, who ſtill does not produce him, ſhall pay the debt; and the ſame law is declared, even if the debtor ſhould die.

"At the time and in the place;" the ſurety for appearance having promiſed, "I will produce the debtor at ſuch a time and in ſuch a place," if he do not produce him at that time and in that place, becomes liable for the condition of the writing, namely, for the debt; that is, he muſt pay the debt to the creditor: ſuch is the ſenſe of the firſt part *of the text:* and this was conveyed by a former text; but a ſpecial rule is ſubjoined, "unleſs he was prevented by the act of GOD or the king." If the debtor abſcond through fear of the king, in conſequence of another's fault, or if he go to another country, promiſing to return at the cloſe of a month, but be detained by illneſs a year *or more,* the ſurety for appearance is not blameable for not producing the debtor.

"After the time has paſt;" after the king's violence has paſt away, and ſo forth. After relief from *apprehenſion of* the king's violence, or after his return to his home on recovery from ſickneſs, if the ſurety ſtill do not produce him, through diſhoneſty, inability, or the like, *the king* ſhall compel the ſurety to pay the debt. The text ſhould be ſo ſupplied.

"And the ſame law is declared, even if the debtor ſhould die;" that is, the ſurety muſt pay the debt. The *Retnácara.*

This opinion, literally taken, is inconſiſtent with reaſon; for favour is ſhown him if he be prevented by the act of GOD or the king, but none is ſhown in the caſe of death, which is the moſt abſolute hindrance ariſing from the act of GOD. Its purport muſt therefore be aſſumed according to the expoſition of VÁCHESPATI MISRA; and that is meant in the *Retnácara.* His expoſition is as follows: when the time, at which the ſurety undertook to produce the debtor, has paſt without any hindrance from

from the act of God or the king; or, in the case of hindrance by the act of God or the king, after that *difficulty ceased;* if the surety still procrastinate, thinking, " I am surety for appearance, and not bound for payment; I will produce the debtor two months hence, but at present I will attend to my own business;" in such a case, if the debtor afterwards die, the surety must pay the debt. Such is the sense of the phrase: and this is also the import of the text of Vrĭhaspati, " on failure of their engagements, the two first must pay the sum lent" (CXLII 3). Menu also declares, that the surety for appearance must himself pay the debt, if he do not produce the debtor.

CXLVII.

Menu:—The man who becomes surety for the appearance of a debtor in this world, and produces him not, shall pay the debt out of his own property.

Must dispose himself to pay the debt out of his own property.

Cullúcabhatta.

Here it should be observed, that when the agreement is simply this, " I will produce or show the debtor at such a time," and no place be specified; if he show him on that very day, while busied in holy worship or the like, or occupied with other affairs, and so forth, it might be supposed, on a cursory view, that the agreement is not violated: but we humbly think it reasonable to affirm, that in such a case the agreement is infringed; for the creditor requires the debtor to be produced at the time agreed on, that he may recover the sum lent; he requires him to be so produced, as may tend to the recovery of the money: this the surety undertakes to fulfil, and the terms of his engagement must be so understood; but it is not fulfilled by indicating *the debtor* at such a time, when he is not amenable: the surety must therefore show the debtor at a time when he is at leisure, *and amenable.* Such is the modern mode of interpretation.

A rule has been propounded for the case of a debtor abscond-

ing

ing through the fault of another ; what is the rule if he abſcond to evade payment of the debt ? On this point,

CXLVIII.

VRĬHASPATI declares :—Let the creditor allow time for the ſurety to ſearch for the debtor who has abſconded ; a fortnight, a month, or ſix weeks, according to the diſtance of the place *where he may be ſuppoſed to lurk* :

2. Let no ſureties be exceſſively haraſſed ; let them gradually be compelled to pay the debt ; let them not be attacked if the debtor be at hand, *and amenable* : ſuch is the law *in favour* of ſureties.

" For the debtor, who is miſſing, or has abſconded ;" according to the literal ſenſe of the verb *nas*, be inviſible, or not to be found. " According to the diſtance of the place ;" according to the remote or near ſituation of the place, and ſo forth. " Gradually :" without the conſent of the ſurety, the whole ſum ſhall not be at once exacted at the ſtipulated term. " If the debtor be at hand ;" if he be preſent, or if he be willing to pay the debt, ſureties muſt not be required to produce the debtor, or pay the debt.

In reſpect of a ſurety for honeſty, a text of law cited in the *Retnácara* propounds a rule.

CXLIX.

Smrĭti :—From a malicious debtor, who is on any account diſpoſed, through enmity, to take the protection of a ſtranger, *profeſſedly hoſtile to his creditor*, or to do any thing inauſpicious *to him*, or to adopt the conduct of wicked men,

2. Let a ſurety for honeſty be taken *as a precaution* againſt ſuch behaviour ; if his conduct belie the promiſe, his ſurety muſt pay the debt.

" From

" From a malicious debtor, who is diſpoſed, &c." ; whoſe mind is bent on taking the protection of a ſtranger, that is, of a profeſſed enemy to the creditor ; on doing any thing inauſpicious to the creditor ; or on adopting the conduct of wicked men, ſuch as thieves and the like. Why ſhould a debtor take the protection of his creditor's antagoniſt ? In reply to this, he adds, " through enmity :" lending his own money, the creditor confers a favour ; when he demands his money, the malice of a wicked man is rouſed. This is obvious. The *Retnácara.*

" *As a precaution* againſt ſuch behaviour ;" leſt he ſhould take refuge with a profeſſed enemy *of the creditor,* and ſo forth : let ſome perſon be taken as ſurety for honeſty or confidence ; that is, for the certainty that he will not ſeek the protection of a profeſſed enemy, and ſo forth. Such is the ſenſe of the firſt phraſe. He is in reality ſurety for honeſty. He ſays, " that man is honeſt, he will be ready to pay the debt, and will not take refuge with *thy* profeſſed enemy."

" If his conduct belie the promiſe ;" if it be different from what was promiſed : taking the protection of the creditor's enemy, if he diſcharge not the debt, the king ſhall compel the ſurety to pay the debt at the cloſe of the ſtipulated term. Such is the ſenſe of the laſt phraſe : and this is alſo the import of VRĬHASPATI's expreſſion, " on failure of their engagements, the two firſt muſt pay the ſum lent."

On this *text* (CXLVIII) CHANDÉSWARA remarks, that " wherever confidence is wanting, the king ſhould require a ſurety for confidence *or honeſty* to be given." Accordingly, if the creditor refuſe the loan, apprehending the inſolvency of the borrower, and ſome perſon affirm, " he is not inſolvent ;" and if the creditor, confiding in that aſſurance, lend the money ; that perſon alſo is a ſurety for confidence, as has been already noticed. This and other points may be reaſoned. Hence BHAVADÉVA has ſaid, if it be affirmed by ſome perſon, " that man is not thy debtor, but ſome *other* honeſt man," ſhould it be afterwards proved by other evidence that he was the debtor, that cheat is *deemed* a ſurety. According to this opinion of BHAVADÉVA, it muſt be underſtood, that if a cheat, ſent by the debtor, make ſuch affirmation, he is only *deemed* a ſurety for confidence ; but if he make that affirmation when queſtioned by the king or the

umpire, he is a perjured witneſs, and ſhall undergo the puniſhment of falſe teſtimony.

In law-ſuits there are three ſorts of ſureties; the repreſentative of the party who pleads his ſuit; the ſurety for his appearance; and the ſurety for the ſum which may be due from him. This and other points may be underſtood from popular *practice*. It has been almoſt expreſsly declared already, and ſhould be further diſcuſſed under the title of Adminiſtration of Juſtice.

What ſhould be done in the caſe of a ſurety for ordeal, CÁTYÁYANA declares,

CL.

CÁTYÁYANA:—At the time and place when the ceremony ſhould be performed, if he fail in ever ſo ſmall a degree, the ſurety ſhall be compelled to pay the ſum as a juſt debt: ſuch is the law reſpecting proved debts.

"When the ceremony ſhould be performed;" when ordeal ſhould be performed. The *Retnácara*.

The meaning is, that this concerns ordeal. If the ſurety for ordeal, having declared, "when ordeal ſhall take place, I will produce that man," ſhould paſs that day, however inconſiderable the delay may be; if he delay it one watch, or even half a watch beyond the day appointed; the ſurety who entered into that engagement muſt pay the ſum "as a juſt debt" proved to be due. So much has been delivered by way of commentary on the *preceding* text of CÁTYÁYANA (CXLV). MENU has delivered a text of the ſame import with the expreſſion of VRĬHASPATI, "and even their ſons if they be dead" (CLI 2).

"A ſurety for payment" (CLI 2); a ſurety who has formally declared, "I will pay *the debt*." Since the text (CXLII) expreſſes, "even their ſons if they be dead," "heirs" *may here ſignify ſons* (CLI 2). The *Retnácara*.

Even the ſurety for delivery, mentioned by VRĬHASPATI, is conſidered by MENU as the ſame with the ſurety for payment. By ſpecifying the ſurety for payment, he exempts the ſon of a ſurety for

for appearance, or for honeſty: and that has been expreſsly declared by MENU in the text which precedes the paſſage quoted.

CLI.

MENU :—But money due by a ſurety, or idly promiſed *to muſicians and actreſſes*, or loſt at play, or due for ſpirituous liquors, or what remains unpaid of a fine or toll, the ſon *of the ſurety or debtor* ſhall not *in general* be obliged to pay.

2. Such is the rule in caſe of a ſurety for appearance *or good behaviour;* but if a ſurety for payment ſhould die, the judge may compel even his heirs to diſcharge the debt.

" Money due by a ſurety ;" what was payable by a ſurety.
CULLÚCABHATTA.

Idle promiſes and the reſt will be diſcuſſed in the chapter on Payment of Debts.

" The ſon ſhall not be obliged to pay money due by a ſurety :" this, which had been previouſly mentioned, muſt be underſtood of money due by his father, who was ſurety for appearance.
CULLÚCABHATTA.

The word " appearance" muſt allude to the debtor as a near term. The honeſt and diſhoneſt proceeding of a debtor had alſo been propounded: hence the ſurety for honeſty is alſo comprehended under the text. This YÁJNYAWALCYA makes evident.

CLII.

YÁJNYAWALCYA :—Should a ſurety for the appearance or the honeſty of another die, his ſons need not pay the debt; but the ſons of a ſurety for payment or delivery muſt pay *the ſum lent, or deliver the thing undertaken.*

MAHARAJA SERFOGI'S SARASW

"Surety for the honeſty of another;" ſurety for *the good behaviour of the debtor*, giving confidence *to the lender*. "Die" is illuſtrative of ſecluſion from the world, remote abſence, and the like. "The ſons of a ſurety for payment:" the literal interpretation is this; the ſons of thoſe who are bound for payment, that is, who are ſureties for the diſcharge of a debt or the delivery of mortgaged property, muſt pay the ſum lent.

"Thoſe who are bound for payment;" the ſons of a ſurety for payment. The *Retnácara.*

A ſurety for delivery is comprehended under the terms of the text. That in ſome inſtances the ſon of a ſurety for appearance muſt alſo diſcharge the debt, CÁTYÁYANA declares.

CLIII.

CÁTYÁYANA:—Should a man become ſurety for the appearance of a debtor from whom he had received a pledge *as his own ſecurity*, the creditor, *if that ſurety die*, may compel his ſon to pay the debt on proving the whole caſe.

If he became ſurety for the appearance of the debtor, after receiving a pledge *for his indemnity*, and the whole caſe be proved by the claimant or creditor; then, if that ſurety be dead, his ſon may be compelled to pay the debt. "Any-how" and "the perſon bound" muſt be underſtood, for the purpoſe of making the agent in the ſentence the ſame, agreeably to rules of grammar; "*ſhould a man become ſurety after receiving a pledge, and be any-how proved to have received that pledge, &c.*" "Proved" is in the regular paſſive form.

Thus a borrower aſks a loan of a money-lender, and he requires a ſurety; but the ſurety, for his own aſſurance, demands a pledge: in ſuch a caſe, he became ſurety for the appearance of a debtor, from whom he had received a pledge. If that ſurety die, and the debtor alſo die, or be unable to diſcharge the debt, the ſon of the ſurety may be compelled to pay it. That debt, however, was not ſecured by a pledge *delivered to the creditor;* the intereſt therefore ſhall be computed at the rate of an eightieth part increaſed

by

by an eighth. "Appearance" is here illuſtrative of a more general ſenſe. Hence, if a ſurety for honeſty alſo take a pledge *as his indemnity* and die *unexonerated*, his ſon may alſo be compelled to pay the debt; for MENU, uſing the expreſſion "a ſurety other than for payment," intends the ſurety for honeſty as well as the ſurety for appearance, who are both different from the ſurety for payment. May not the expreſſion uſed in the text of MENU (CLIV), "a ſurety other than for payment," be reſtricted to the ſurety for appearance, ſince that coincides with the text of CÁTYÁYANA? If the ſurety for honeſty have likewiſe received a pledge, why ſhould not his ſon pay the debt, ſince the reaſon of the law applies equally to both? Accordingly this gloſs is delivered in the *Mitácſhará* on the text of CÁTYÁYANA (CLIII): "ſurety for appearance" is illuſtrative of ſurety for honeſty. However, the text is there read, "even without aſſets left by his father," inſtead of "on proving the whole caſe."

CLIV.

MENU:—On what account then is it that, after the death of a ſurety other than for payment, the creditor may *in one caſe* demand the debt *of the heir*, all the affairs of the deceaſed being known and proved?

This is a queſtion propoſed. "Surety other than for payment;" different from the ſurety for payment, namely a ſurety for appearance *and ſo forth*. "All the affairs of the deceaſed being known and proved;" the circumſtances, ſuch as the receipt of a pledge, *being proved*, that having been taken; and the receipt of the pledge by the ſurety being known and proved, and ſo forth. "The creditor, literally the giver;" the perſon who delivered a loan. After the death of that ſurety, on what account, and from whom, can he demand payment of the debt, ſince the ſurety *himſelf* is dead? This is a queſtion propoſed. The anſwer follows:

CLV.

MENU:—If the ſurety had received money from the debtor, and had enough to pay the debt, the ſon *of him* who ſo received it ſhall diſcharge the debt out of his *inherited* property: this is a ſacred ordinance.

If the debtor had given money, if money had been given by the debtor, (to the ſurety of courſe, from the purport of the text;) then the ſurety has enough to pay the debt; he has a lien on money applicable to the payment of the debt (money of courſe received from the debtor). His ſon therefore ſhall diſcharge the debt "out of his property." The money ſo received is referred ſecondarily to his ſon. "This is a ſacred ordinance;" it is directed in the ſyſtem of juriſprudence that he ſhall diſcharge the debt. Such is the interpretation delivered in the *Retnácara*. But CULLÚCABHATTA explains the term as an epithet of ſurety; it ſignifies one to whom property has been given as a pledge: and thereby having in his hands a lien on a ſum ſufficient to pay the debt, *his ſon ſhall diſcharge it.*

HELÁYUDHA otherwiſe expounds the phraſe, "all the affairs of the deceaſed being known and proved:" 'the circumſtance of his not having received any pledge being known and proved.' Thus, if he became ſurety without having received a pledge, and the whole caſe be known and proved, on what account could the creditor demand the debt *from his ſon* after his death? Of courſe on no account. Hence, after the death of one who became ſurety for the appearance of another without receiving a pledge, the judge ſhall not compel his ſon to diſcharge the debt. But the ſubſequent text (CLV) is explained as above. In effect there is no difference. However, the law concerning money due by a ſurety for appearance, already propounded (CLI), would be *vainly* repeated in the ſubſequent text (CLIV).

"If the ſurety had received money;" if property had been delivered to him not amounting to gift. Conſequently, if effects had been delivered to the ſurety by way of depoſit, without declaring a poſitive gift and ſo forth; if the ſurety be ſuch, *we ſay,* his

his ſon ſhall diſcharge the debt out of his property, namely the property which is in his poſſeſſion held as a depoſit. He muſt diſcharge it, although he hold no property given *to him*. This takes place when the ſurety for appearance has not produced the debtor, and that debtor afterwards die, or, though living, is inſolvent. This caſe is intended. Or, with a view to the caſe of a ſurety for payment, this text (CLIV) enforces the ſenſe of the preceding text. "All the affairs of the deceaſed being known and proved;" the whole circumſtance of his not having received a pledge being known and proved. On what account then might the creditor demand the debt, after the death of a ſurety for appearance, who had received no pledge? It follows of courſe, that on no account can he demand it. By the condition ſpecified, that the receipt of no pledge be proved, it is intimated, that, if he became ſurety for the appearance of a debtor, from whom he received a pledge, then, ſhould he die, the creditor may recover the debt from his ſon.

If there be ſeveral ſureties, by whom muſt the debt be paid? and what ſhall be the deciſion of ſuch a caſe? For inſtance; if there be many ſureties for payment, or many ſureties for appearance, or honeſty, who have received a pledge; in ſuch a caſe may payment be required from any one of them? or muſt they all pay their proportionate ſhares of the debt? or each ſeverally pay the whole ſum?

CLVI.

YÁJNYAWALCYA:—When there are two or more ſureties jointly bound, they ſhall pay their proportionate ſhares of the debt; but when they are bound ſeverally, the payment ſhall be made *by any one of them*, as the creditor pleaſes.

At the time of contracting the debt, if it were ſettled by the expreſs declaration of the creditor or of the debtor, or by the engagement of the ſureties themſelves, that the creditor ſhall receive the debt from the hands of any one of ſeveral ſureties bound for the ſame debt, this text propounds a rule of deciſion for that

caſe

case. Two or more persons may become sureties in consequence of the creditor's requisition: for instance, he may require several sureties, reflecting, "if a single surety die as well as the debtor, from whom could the debt be recovered?" Or the debtor may ingenuously give several sureties. Other cases may be easily supposed.

The sense of the text is this: when there are many sureties, they must make up the sum according to their proportionate shares, and pay it to the creditor. The whole meaning is, that the general law directs payment of the debt by proportionate shares, in the case of many sureties for the same debt. He propounds a special rule: "but when they are bound severally, &c." If they be bound in the same manner as a single surety; if any man singly become surety for a debt, as that whole debt must be discharged by him, so, if they become severally bound for the payment of the whole debt, *it may be exacted from any one of them.* When these sureties become so bound, the payment shall be made *by any one of them*, as the creditor pleases. Consequently, should the creditor choose to require payment of the whole debt from DÉVADATTA alone, it must be discharged by DÉVADATTA alone; if he choose to require payment of the whole debt from any one of them, it must be paid by any one of them: but if he choose to require it from all proportionally, it must be discharged by all the sureties. In this and other similar modes should be understood the creditor's option.

If the creditor be desirous of exacting payment of the whole debt from each of the sureties, what would be the consequence? Since that is contrary to justice, his wish of exacting an undue sum would be fruitless: for, who can obtain many hundred *suvernas* for a loan of one hundred *suvernas?* To detail the reason of the law would unnecessarily swell the book; it is therefore unnoticed.

Should the creditor choose to exact payment of the whole debt from any one surety, it is settled that he must discharge it. Having paid it, may that surety recover from all the other sureties their proportionate shares of the debt? On this question a certain author has said, he shall not recover *their proportionate shares from the other sureties*, since no law *has expressly declared it:* for the general rule directs, that "they shall pay their proportionate

portionate ſhares; and it is intimated by a ſpecial rule, that "payment ſhall be made as the creditor pleaſes." Conſequently, when there are two or more ſureties bound like a ſingle ſurety for the payment of the whole debt without mutual connection *or joint reſponſibility*, then the payment ſhall be made as the creditor pleaſes: he may exact payment of the whole debt from any one of them, or from all the ſureties, under the authority of that ſpecial rule. In a different caſe, when two or more ſureties are jointly bound, they muſt pay their proportionate ſhares of the debt: how could one ſurety, having diſcharged the whole debt, recover from the reſt their proportionate ſhares, when all were ſeverally bound like a ſingle ſurety? The law forbids it.

That is wrong; for the general and particular rules would be irrelevant, ſince there would be no contradiction of ſenſe, *or exception*. In all caſes where two or more perſons have become ſureties, all the ſureties ſhall pay their proportionate ſhares of the debt; but if they be ſeverally bound like a ſingle ſurety, another diſtinction is ſtated, namely, that payment ſhall be made as the creditor pleaſes: as in the injunction, "give curds to the prieſts, *and diluted curds to the* CAUNDINYAS," meaning to thoſe who have officiated at the ſolemn rites*. In fact, the expreſſion, "as the creditor pleaſes," ſhould be conſidered only as a circumſtance of the action. That action is ſuggeſted by the neareſt term, "they ſhall pay:" and the agents in the ſentence are the ſureties juſt mentioned. It appears, therefore, that immediate payment muſt be made by the exertion of any one of them, or by all the ſureties, at the option of the creditor; and that exertion conſiſts in making up the ſum by any poſſible means, and ſo forth. It follows, that all muſt *ultimately* pay their proportionate ſhares of the debt. There is not conſequently any difficulty. Again; if any one ſurety refuſe to pay his ſhare *of the debt*, the king ſhall compel him to pay it. But if any one of many ſureties ſay, "I will alone diſcharge the debt," no law directs that it ſhall be ſolely paid by him; reaſon alone ſuggeſts it.

When the debtor gives a ſecond ſurety for payment, or for appear-

* I inſert the whole example, which is incomplete in the citation. The ſpecial injunction is an exception to the general precept. But a rule, unconnected with, and independent of another, is not a particular or exceptive rule.

appearance, to the ſurety for payment; in that caſe alſo, like a creditor obtaining the ſum from the ſurety who is reſponſible to him, the original ſurety ſhould pay the debt to the creditor; but the ſubordinate ſurety cannot be attacked by the original creditor. So, in other caſes, a rule of deciſion may be deduced by *the reader* himſelf.

If the ſureties become ſeverally bound, each for his own undertaking, they may each be ſeverally compelled to pay the whole ſum, *for which he became bound*, to the creditor. In this gloſs of the *Vivâda Retnácara*, "each ſeverally" ſignifies one by one; intending the caſe of more than one *ſeparate engagement*.

"As the creditor pleaſes:" for inſtance, when the engagement is made, the creditor ſays, "at my option the ſum may be exacted from any one ſurety; I am not reſtrained to make a joint demand; any one ſurety muſt pay the whole ſum." Such is the ſenſe. The *Vivâda Chintâmeni.*

This point has been ſufficiently explained by the text of VRĬHASPATI (CXLII 3). If the ſurety for payment die, it is eſtabliſhed that the debt may be recovered from his ſon; ſhall it be recovered with or without intereſt?

CLVII.

VYÁSA:—The ſon of a ſon ſhall *in general* pay the debt of his grandfather, but the ſon *only* ſhall pay the debt of his father incurred by his becoming a ſurety, *and both of them* without intereſt; but it is clearly ſettled, that their ſons, *the great grandſon and grandſon reſpectively*, are not *morally* bound to pay.

The ſenſe is, the grandſon muſt pay the debt which was contracted by his paternal grandfather without giving a pledge. This muſt be conſidered as appertaining to the title of Payment of Debts. "The debt of his father incurred by his becoming a ſurety;" if his father became ſurety for the payment of a debt due from any perſon; or, taking a pledge, became ſurety for his appearance or honeſty; then, ſhould the father die, his ſon muſt

muſt pay that debt without intereſt; he muſt only pay the exact ſum borrowed, and no intereſt upon it. Conſequently, the entire debt of the grandfather muſt be paid by the grandſon without intereſt; and the debt of the father, incurred by his becoming a ſurety, muſt be paid by the ſon without intereſt." The *Retnácara.*

Here the entire debt of the grandfather ſignifies the debt contracted by the grandfather with a ſtipulation of intereſt. "Their ſons are not *morally* bound to pay;" a ſon of the grandſon, and a ſon of the ſon. The great grandſon need not pay any debt of his great grandfather, nor the grandſon the debt of his grandfather incurred by becoming a ſurety.

CLVIII.

CÁTYÁYANA:—Money due by a ſurety need not on any account be paid by his grandſons, but in every inſtance ſuch a debt incurred by his father muſt be made good by a ſon without intereſt.

The debt of a grandfather, incurred by his becoming a ſurety, need not be paid by grandſons: ſuch a debt ſhall only be paid by a ſon; ſtill, however, without intereſt. To denote this, the particle is employed. The connective ſenſe is, that the ſon is alſo exempted from the payment of intereſt. From the expreſſion "in every inſtance," a certain author has deduced, that the debt of his father, incurred by his becoming a ſurety, or on his own account, ſhall be paid by the ſon without intereſt, as a debt incurred by his grandfather *is paid* by a grandſon *without intereſt.* That is wrong; for it is inconſiſtent with a text which will be cited from VRĬHASPATI (CLXVII 2), and with the gloſs of CHANDÉSWARA, "the debt muſt be paid by ſons with intereſt, as if it were their own." Hence the expreſſion "in every inſtance" muſt be underſtood to ſignify "in every inſtance of a ſurety for payment and ſo forth."

CLIX.

Smrĭti, cited in the *Mitácſhará:*—Should the debtor be

be insolvent, and the surety have assets, the principal only must be paid *by his son;* he is not liable for the payment of interest.

This text also ordains the payment of a debt without interest by the son of a surety for payment. What proof is there that the debt shall be discharged without interest by the son of a surety for the appearance or honesty of a debtor, from whom he had received a pledge? It should not be affirmed, that the text of CÁTYÁYANA above cited, expressing "in every instance," *is authority for exempting him from the payment of interest;* for that may be otherwise expounded. Nor should it be affirmed, that the text of law cited in the *Mitácshará* may authorise that inference, if "assets" be explained "a pledge." The author of the *Mitácshará* does not warrant such an interpretation.

On this point it is said, there is no authority for asserting that the debt shall be paid with interest. The text of CÁTYÁYANA directs generally, that a debt incurred by a surety shall be discharged without interest. Consequently that is settled in every instance of a debt incurred by a surety: but in the present instance the consequence might be inconsistent with reason. It cannot be true that the son of him who, having received effects worth ten pieces of money, became surety for a debt of five pieces, shall pay the debt without interest. If a chattel of small value have been received as a pledge, then only shall the debt be discharged without interest; but when valuable effects have been received, why should payment be accepted without interest while the assets are sufficient for the *whole* debt? The debt must therefore be discharged with interest; and the surety must restore the surplus, if there be any, to the debtor or his family.

This decision regards a pledge which may not be used; it is not fit that the surety should use the pledge: but if it be used, payment must be made in proportion to the use and profit *of the pledge*. If it be asked, the pledge received being of very inconsiderable value, might not the whole debt, even without interest, be fully discharged? the answer is, even that is admissible: accordingly it is expressed in the text of MENU, "if the surety had enough to pay the debt;" and in the gloss of the *Mitácshará*, "if he had received a sufficient pledge." Should the son of the

surety

ſurety alſo die, the ſucceſſor of the debtor, who has received his heritage, ſhould withdraw the pledge from the grandſons of the ſurety, and himſelf diſcharge the debt. Such is the meaning.

If there be two or more ſureties for the ſame debt, and one of them die, leaving a ſon, ſhould it be the creditor's choice to recover the debt from the ſon, he muſt receive it without intereſt, and not with intereſt. But, ſhould it be the creditor's choice to recover the debt from another ſurety, the ſon of the deceaſed ſurety muſt pay his proportionate ſhare; but he need not pay intereſt, for he is the ſon of a ſurety. The creditor, however, may recover the debt with the whole amount of intereſt, ſince the ſurety *called upon* muſt immediately pay *the whole ſum*. Whence then can the intereſt be recovered on the ſhare of the debt which is payable by the ſon of a deceaſed ſurety? To this it is anſwered, if there be many ſureties ſeverally bound like a ſingle ſurety, ſhould any one of them die, leaving no ſon or other *heir liable for the debt*, from whom could his ſhare of the debt be recovered? Conſequently, as in that caſe the ſurviving ſureties muſt contribute their proportionate ſhares *of the deficiency*, and diſcharge the debt, *although* "payment be made as the creditor pleaſes;" ſo in this caſe alſo, even though the ſon be living, he is as it were non-exiſtent in reſpect of intereſt: conſequently the ſurviving ſureties, together with the ſon of the deceaſed ſurety, muſt contribute their proportionate ſhares of the principal ſum, but the amount of intereſt muſt be made good by them, unaided by that ſon.

But ſome lawyers remark, when the creditor makes his election of recovering the *whole* ſum from one ſurety, he ſhall receive it from one alone; how can the ſurety, who diſcharges the debt, recover proportionate ſhares from the reſt? But if the creditor have choſen to receive the ſum from all the ſureties in due proportion, then the ſon of a deceaſed ſurety muſt pay his ſhare of the debt without intereſt. Again; when five perſons have become jointly bound as ſureties for a debt, then, ſhould one die, his ſhare of the debt muſt be received from his ſon without intereſt: but if he leave no ſon, or other *amenable heir*, his proportionate ſhare is loſt; ſince it was virtually underſtood, when the agreement was made, that the five perſons were each bound for a fifth part of the debt. Yet, if it were agreed, "ſhould any

one of us die, the debt muſt be diſcharged by ſuch of us as ſurvive," then the whole debt muſt be paid by the ſurviving ſureties contributing their proportionate ſhares. This is mentioned merely as an example; that in other caſes alſo the adjuſtment muſt be made according to the tenor of the agreement, may be eaſily inferred by the reader himſelf.

Shall the ſurety, *thus becoming* a creditor, recover what has been paid by him to the *original* creditor, in conſequence of the debt remaining undiſcharged by the debtor though living, but inſolvent, diſhoneſt, or the like?

CLX.

VRĬHASPATI ordains:—Should a ſurety, being haraſſed, pay the debt for which he was bound, he ſhall receive twice the ſum from the debtor, after the lapſe of a month and a half.

" A ſurety;" a perſon who has become bound *for another*. " Being haraſſed;" being adjudged by the arbitrators to pay the debt *in this form*, " ſince he became ſurety for that man, he muſt pay the debt to the creditor." " After the lapſe of three fortnights, *or a month and a half*;" after forty-five days. A debt of one hundred *ſuvernas* having accumulated with intereſt to two hundred *ſuvernas*, is again doubled, and amounts therefore to four hundred *ſuvernas*; that ſum he ſhall receive from the debtor. The cauſe of doubling the debt is the offence committed in not immediately paying it.

CLXI.

VISHNU and NÁREDA:—If the ſurety, being haraſſed by the creditor, diſcharge the debt, the debtor ſhall pay twice as much to the ſurety.

CLXII.

YÁJNYAWALCYA:—When the ſurety is compelled to

to pay a notorious debt to the creditor, the debtor ſhall be forced to repay double the ſum to the ſurety.

"Notorious;" adjudged by arbitrators. "Notorious" ſhould be underſtood in the text of VISHNU and NÁREDA, for it has the ſame import with the text of YÁJNYAWALCYA. VRĬHASPATI renders the meaning evident.

CLXIII.

VRĬHASPATI:—If dull *ſureties* innocently pay the debt, when unbidden, or when required to pay another debt, how and from whom can they recover the ſum?

"Dull;" whoſe underſtanding is ſluggiſh; being ſlow *even* in their own affairs, *it is perceived that* their minds are heavy. "Innocently;" without guile. "Unbidden" by the umpire.

The *Retnácara.*

The meaning is, not told by arbitrators, "pay the ſum to that man." Here "unbidden by arbitrators" alſo implies, that it is not any-how proved by witneſſes that the debt ſhould be paid by the ſurety. Accordingly YÁJNYAWALCYA ſays "notorious," that is, not unbidden by arbitrators. So,

CLXIV.

CÁTYÁYANA:—The ſurety ſhall *immediately* receive from the debtor, *but without intereſt*, the ſum which he has paid, when legally urged by the creditor, on proving the caſe by witneſſes.

On proof by witneſſes that the debt ought to be paid. "Urged by the creditor;" mentioned as a matter of courſe, for payment would hardly be made by one who was not urged. From the expreſſion "he ſhall receive the ſum," it appears that

the ſurety ſhall receive ſo much only as was paid by him to the creditor, and not double that ſum. But the double ſum has been directed by the text of YÁJNYAWALCYA; there is conſequently an inconſiſtency. It muſt therefore be ſettled, that within a month and a half he can only receive the exact ſum paid, but after a month and a half he ſhall receive twice that ſum. In this caſe, however, there is no reference to the period in which a debt is regularly doubled, ſuch as fifty months and the like, for no ſuch law exiſts; the expiration of a month and a half is alone a ſufficient term, under the text of VRĬHASPATI (CLX), to double the ſum. Such is the beſt mode of interpretation approved in the *Retnácara*.

GRAHEŚWARA and MISRA explain the text of CÁTYÁYANA as intending only the following caſe: a conſiderable ſpace of time having elapſed beyond the ſtipulated term, if the creditor reſolve on recurring to the king, but the ſurety, apprehending puniſhment, pacify the creditor at a pecuniary expence, and diſcharge the debt, the ſurety ſhall in that caſe recover from the debtor the money employed in appeaſing the creditor; but ſhall only receive back the exact ſum, not twice the amount. But the author of the *Mitácſhará* ſays, twice the ſum muſt be immediately paid. He holds, that the lapſe of a month and a half is not required. To reconcile the text of VRĬHASPATI, money expended in appeaſing the creditor muſt be ſuppoſed. On this ſubject YÁJNYAWALCYA propounds a diſtinction.

CLXV.

YÁJNYAWALCYA:—Female ſlaves and cattle delivered *by a ſurety* muſt be made good with their offspring; grain *ſhall* only *be repaid* two-fold; cloth is declared to be quadrupled; and liquids octupled.

"Female ſlaves and cattle;" a debt conſiſting of female ſlaves or cattle. If a ſurety be compelled by a creditor to deliver female ſlaves, goats, and the like, they ſhall be received back by the ſurety with their offſpring only; but grain and the reſt with

with the accumulation mentioned. Other things can only be doubled. The *Dípacalicá*.

The doubling of every kind of property having been ſuggeſted, it is here directed by a ſpecial law, that liquids ſhall be repaid octuple; cloth quadruple; and female ſlaves or cattle with their offspring, that is, with no other recompenſe but their offspring. If one female goat, having been lent, be made good by the ſurety, in conſequence of the debtor being unable to diſcharge the debt, then, after the lapſe of conſiderable time, the debtor being able to diſcharge the debt, one female goat ſhall be delivered to the ſurety, and as many kids as have been produced from that *firſt* goat. If that female goat die *unproductive*, the debtor muſt afterwards deliver a ſingle goat, and no kids, for none have been produced. "Grain and the reſt;" grain, cloth, and liquids. "Other things;" gold and the like. The gloſs of the *Dípacalicá* may be taken in a literal ſenſe.

Here an obſervation ſhould be made. When the ſurety would have been liable for the payment of the debt, in conſequence of the debtor's abſence; if the ſurety be dead, it ſhall be paid by his ſon alone, and without intereſt, as has been mentioned. Afterwards, when the debtor is amenable for the payment of the debt, it is reaſonable that he ſhould pay to the ſon of the ſurety twice the amount of the original ſum paid by him without intereſt. Muſt that debtor again pay the *arrear of* intereſt to the creditor, or not? On this queſtion ſome remark that the principal ſum only, and no intereſt, has been received from the ſon of the ſurety: the intereſt ſhall therefore be recovered from the debtor; for it is inconſiſtent with reaſon that the creditor ſhould ſuſtain a loſs without any fault on his part. But others ſay, that intereſt need not in that caſe be paid by the debtor, ſince no law directs it. Is not the general law, which ordains intereſt at the rate of an eightieth part, applicable to this caſe? No; for that is precluded by the text of CÁTYÁYANA (CLVIII), the terms of which are expounded "void of intereſt;" ſince, if intereſt were payable by any perſon whomſoever, it could not be void of intereſt. Of theſe two opinions, preferring that which is beſt and moſt firmly eſtabliſhed, a ſingle rule of deciſion ſhould be adopted.

On this *text* (CLXV) the *Mitácſhará has this comment:* that kind of property, for which a ſpecial *recompenſe or* rate of intereſt

 has

has been propounded, being paid by a ſurety, the debtor muſt immediately make it good, without any reference to particular periods, but with the intereſt propounded: ſuch is the implied ſenſe. The author conceived, that intereſt is propounded by the text on female ſlaves, cattle, and the like: now there can be no intereſt without a loan, as has been already ſtated; but female ſlaves and cattle may be lent by one who is unable to maintain them himſelf, and wiſhes they ſhould be ſupported: this text intends only ſuch a loan.

CHAP. V.

ON THE

PAYMENT OF DEBTS.

A DEBT of ſuch a kind ſhould be paid ; a debt of ſuch a kind ſhould not be paid ; it ſhould be paid by this heir ; it ſhould be paid at this time ; it ſhould be paid in this mode : thus the ſubject is five-fold in reſpect of the debtor. It is two-fold in reſpect of the creditor, namely, the rule for delivery, and the rule for receipt. Of theſe ſeven topicks of loans and payment, one topick, the rule for delivery by the creditor, has been expounded. Explaining the verb " give " or deliver in the ſenſe of payment, the other ſix topicks are expounded in *the* two *following* chapters. Such is the method authorized by the *Mitácſhará*.

CLXVI.

VRĬHASPATI :—By whom, to whom, and in what mode, ſhould, or ſhould not, be paid a loan which has been received from the hands of another in the form of a loan on intereſt, ſhall be now declared :

2. If the time of payment be not expreſſed, the debt ſhall be paid on demand, *with the intereſt then due ; if expreſſed,* at the full time limited ; and *if not previouſly demanded,* when intereſt ceaſes *on becoming equal to the principal :* if the father

 ſhould

ſhould die *in debt*, it ſhall be paid by his ſons, *with intereſt as far as the law allows.*

By the text of NÁREDA (I) the forenſick term of "loans and payment" is ſtated as comprehending twenty topicks in reſpect of the creditor and debtor*. The verb "give" or deliver, has conſequently the double ſenſe of lend and pay. The topicks ſuggeſted by the verb taken in its ſenſe of "lend," namely, the eight-fold rule for delivery by the creditor (intereſt and the reſt), and the rule for receipt by the debtor (ſtipulated intereſt, and the delivery of the intereſt promiſed, and ſo forth), which conſtitute ten topicks of loan and payment, have been directly or virtually expounded. The topicks ſuggeſted by the verb taken in its ſenſe of "pay," are now propounded, namely, the eight-fold rule for payment by the debtor, and the rule for receipt by the creditor, which alſo conſtitute ten topicks of loan and payment.

"From the hands of another;" from the hands of the lender. "In the form of a loan on intereſt;" with a declaration, "that ſhall be repaid with intereſt by me to him:" the conſtruction is, 'the debt which had been received *in this manner*.' By what debtor that ſhould, or ſhould not, be repaid; to what creditor it ſhould, or ſhould not, be paid; and how, or in what form it ſhould, or ſhould not, be paid. Again; imagining the word "what," the topicks of what ſhould, or ſhould not, be paid, may be underſtood, as in one reading of the text of NÁREDA (I).

"It ſhall be now declared;" this, ſignifying 'almoſt at the preſent time,' expreſſes, that it ſhall be forthwith declared. The Sage proceeds to the rule for payment (CLXVI 2): that debt, which has been received for no ſtipulated term, muſt be repaid on demand; that is, on a ſimple demand. Conſequently, for that loan, which has been received on requeſting it in this ſimple form, "lend me the ſum," the rule of payment is ſuch that no delay muſt be made when the debtor is told, "pay the debt."

When it is ſettled by both parties, that the will of the creditor ſhall

* By whom { what may be lent / what may not be lent / what muſt be paid / what need not be paid } to whom { } { } in what form

Rules for delivery / Rules for receipt } by the creditor { } by the debtor.

ſhall regulate the time of payment, the debt muſt be paid on a ſimple demand; but when another term has been fixed, it muſt be paid at the full time limited. MISRA.

And BHAVADÉVA ſays, when *a time* has been ſettled by both parties as the period of payment, *or when the debt has been made payable* at the option of the creditor, &c. In this gloſs the words "ſpecifick time" muſt be ſupplied. To both theſe opinions it may be objected, that the ſubſequent phraſe "at the full time limited" would be a needleſs repetition. But that phraſe concerns a debt for which a time of payment has been fixed. Conſequently, for that loan which has been received on application made in this form, "I will pay the debt within two years, lend me the ſum *required*," the rule of payment is ſuch that no delay muſt be made when that period is complete. But when a loan has been received on a ſimple requeſt in this form, "lend me the ſum *required*," and the creditor meanwhile has not demanded it, what ſhould be done? The Sage adds, "when the intereſt ceaſes;" now intereſt ceaſes on the debt after the lapſe of time ſufficient to double it, as has been already mentioned: that it muſt be then paid, is the rule of payment for ſuch debts. This and other points may be argued.

It has been thus explained, that the very perſon who contracted the debt muſt diſcharge it. But in the caſe of his death, the Sage adds, "if the father ſhould die *in debt*, it muſt be paid by his ſons." On failure of the father, who contracted the debt; that is, if he die, or be ſecluded from the world, or go to a foreign country, the debt muſt be paid by his ſons, with intereſt. It muſt be paid even by his ſon's ſon, *but* without intereſt.

CLXVII.

VRÍHASPATI:—The father's debt muſt be firſt paid, and next a debt contracted by the man himſelf; *but* the debt of the paternal grandfather muſt even be paid before either of thoſe.

2. The ſons muſt pay the debt of their father, when proved, as if it were their own, *or with intereſt;* the

the son's son must pay the debt of his grandfather, *but* without interest; and his son, *or the great grandson*, shall not be compelled to discharge it, *unless he be heir, and have assets**.

First the debt of the grandfather *should be discharged*, next the debt of the father, and lastly the debt contracted by the man himself: such is the legal order of payment. "As if it were their own;" as their own debts are paid with interest, so must this be paid with interest. "When proved;" when established by the testimony of witnesses. But the debt of a grandfather may be discharged without interest. "His son;" the grandson's son, readily suggested by the preceding term, is thence understood. Consequently the great grandson shall not be compelled against his will to discharge the debt of his great grandfather; but, if the great grandson be willing, it may be discharged by him.

CLXVIII.

VISHNU:—If he who contracted the debt should die, or become a religious anchoret, or remain abroad for twenty years, that debt shall be discharged by his sons or grandsons, but not by remoter descendants against their will.

"Twenty years" are connected *in the sentence* with absence in a foreign country. "Not by remoter descendants;" not beyond the third generation *inclusively*: it need not be paid by the fourth in descent, and so forth. "Against their will;" but if they wish well to a great grandfather or other remoter ancestor, the debts even of such ancestors should be paid by the fourth in descent, and so forth. The *Retnácara*.

Civil and natural death being in effect equal, a lapse of time cannot properly be required; therefore the commentator says, the construction refers twenty years to the case of absence in a foreign

* Without which, the son and grandson are under a moral and religious, not a civil, obligation to pay the debt, if they can; but assets may be followed in the hands of any representative. Note by Sir WILLIAM JONES.

foreign country. "If they wish well to an anceftor;" fince the non-payment of a debt is declared a crime in the third degree, by a text of MENU*, the great grandfather fuffers torment in a region of horror if his debt remain undifcharged; to prevent that, is a benefit to the great grandfather; when they wifh this benefit to him, they muft pay the debt. In like manner, the debt contracted even by a fon or other defcendant may be difcharged by the parent if he be willing.

That which affords no gain or permanence of capital, is not a debt†; and if this be not repaid by any perfon, it is *confequently* no debt: how then can torment in a region of horror be the confequence of its remaining undifcharged? It fhould not be objected, that the text muft therefore be unmeaning, fince the law only fuggefts torment in a region of horror, fhould the debt be not difcharged by thofe whom the law declares indifpenfably bound to pay the debt. This argument is ill founded, fince the great grandfather was himfelf bound for the indifpenfable payment of the debt, and the word expreffive of caufe, in the definition of debt (II), there fignifies a circumftance only, *not an efficient caufe*.

If the father die, his debts muft be paid by his fons, as abovementioned: this NÁREDA declares with fpecial diftinctions.

CLXIX.

NÁREDA:—A father being dead, his fons, whether after partition or before it, fhall difcharge his debt in proportion to their fhares; or that fon alone who has taken the burden upon himfelf.

"Being dead;" having deceafed, or having retired from worldly affairs: this alfo fuggefts long abfence, as exprefsly ftated in the rule of VISHNU (CLXVIII). "In proportion to their fhares;" whether after partition or before it: fuch is the meaning.

Confequently, after partition, fons muft difcharge the debt at its full term, whether known or unknown when partition was made,

* See MENU, Chapter xi, V. 66.

† See the definition of Loan or Debt at V. 2.

made, in proportion to their ſhares. But if they be undivided, they ſhall pay it out of the common property. However, if the eldeſt brother, or any other brother ſkilful in buſineſs, ſuperintend the affairs of the family like a father, he muſt diſcharge the paternal debt out of the common ſtock. In effect, there is no difference in the two caſes. This diſtinction may nevertheleſs be underſtood; by the firſt part *of the text* it is ſuggeſted, that if all the brothers be ſimilarly circumſtanced, all, or any one of them as ſubſtitute for the reſt, may be impleaded; but if any one brother have taken the burden upon himſelf, he alone is impleadable.

Or the phraſe, "that ſon alone who has taken the burden upon himſelf," may be thus expounded; when the other ſons reſide at various places, and one ſon occupies his father's abode, and enjoys his father's property, he alone bears the burden, namely the load *formerly* borne by his father, and therefore he muſt alſo pay his father's debts: for MISRA ſays, 'when any one of the ſons is inſtalled in the place of his father, he alone *muſt pay the debt;*' and *he muſt pay it*, becauſe he has taken the heritage. So muſt two or more *brothers*, who have taken the burden upon themſelves; for the term "that ſon," *though* expreſſed in the ſingular number, muſt be taken indefinitely.

Again; if any one of the ſons declare, "I will neither receive *my ſhare* of my father's property, nor pay his debts," and the others aſſent to that *arrangement;* in that caſe, thoſe only who have accepted the father's eſtate, with his debts, ſhall diſcharge the debts of their father. This alſo is intended by the expreſſion, "that ſon alone who has taken the burden upon himſelf." Or the expreſſion, "whether after partition or before it," may be explained, 'whether ſeparated from their father or not ſeparated;' and the particle may be taken in a determinate ſenſe. If there be undivided ſons, they alone muſt diſcharge the debt; or, on failure of them, the divided ſons. This interpretation ſhould be admitted.

CLXX.

YÁJNYAWALCYA:—The father being gone to a foreign country, or deceaſed *naturally or civilly*, or wholly immerſed in vices, the ſons, or their ſons,

ſons, muſt pay the debt; but, if diſputed, it muſt be proved by witneſſes.

"Being gone to a foreign country;" having gone to a diſtant abode in a foreign country, and not returning within twenty years: for it coincides with the rule of VISHNU (CLXVIII), and the text which will be cited from NÁREDA (CLXXV). Secluſion from the world, *or civil death*, muſt alſo be underſtood. "Deceaſed;" meaning natural demiſe.

"Wholly immerſed in vices;" the term *(vyaſana)* is explained by lexicographers, 'danger, diſeaſe, or calamity; falling low, vice originating in luſt or wrath *.' Conſequently, the father being involved in diſtreſs, that is, being afflicted with a hopeleſs diſtemper, or long confined in fetters by the king in conſequence of the offence of another; or fallen from his claſs, as a degraded perſon or the like, and excluded from the patrimony; or immerſed in vices originating from *irregular* deſires, (whether avarice, luſt, or any impulſe of the mind,) ſuch as gaming or the like, and love of harlots; or immerſed in vices originating from a wrathful temper, or governed by pride; *in all theſe caſes the ſon muſt pay the debt.* For inſtance; the father, behaving with inſolent pride, ſays, "I will not pay the debt, the creditor may take what meaſures he pleaſes; in ſuch a caſe, the ſon ſhould pay the debt, leſt he fail in duty to his father, out of any poſſible funds, either the paternal wealth or other property: but on failure of ſons, the debt ſhould be diſcharged by the ſon's ſon. However, the debt may be paid by the ſon's ſon without intereſt, as above mentioned: the caſe is the ſame. CHANDÉSWARA has briefly ſaid, ſhould the father be unable to pay the debt, it muſt be diſcharged by his ſon, or, on failure of ſons, by his grandſon.

The ſon does not know that his father had contracted a debt from that man; or he knows it, but conceals his knowledge; in theſe caſes "it muſt be declared by witneſſes:" it muſt be eſtabliſhed by the evidence of witneſſes. But on the reading approved by MISRA, *(ſácſhi bhávitam* inſtead of *ſácſhi bháſhitam,)* the *literal* ſenſe is, "proved by witneſſes."

The father, who contracted the debt, being abſent, or dead, or addicted to gaming, to *frequentation of harlots and* the like, or (under

* AMERA SINHA, on words with many ſenſes.

(under *the suggestion of* the particle " or " *taken in a large sense*) afflicted with an incurable distemper or the like, or degraded, his debts must be paid by his son, or, on failure of him, by his son's son; but, if disputed, the debt must be proved by oral or other *sufficient* testimony. *The Dípacalicá.*

The word " witnesses," standing in the text, is supposed in the *Dípacalicá* to intend also written evidence and the like. Here the debt has remained undischarged in consequence of degradation, because the degraded person held not the patrimony; not because he is *equally* incapable of paying debts as of performing religious rites. It must be paid by his son, to rescue him from a region of torment. But, according to RAGHUNANDANA and others, an outcast is only incapable of property so long as he be averse from the *necessary* penance.

Must a debt, contracted by a man who has no assets, be paid after his death by his son or grandson? On this question it is said, even in such a case the debt contracted by him ought to be paid by his son, or, on failure of sons, by the grandson; for, commenting on the following text, it is said in the *Dípacalicá*, the son, who is capable of inheriting the estate, not being blind nor otherwise disqualified, but who has not received assets left by the father, *is meant*; not one who has taken the father's estate, for he is suggested by the expression " who has received the estate:" and it is mentioned in the *Mitácshará*, that the son or grandson may be compelled to pay the debt, even if no assets have been received: and it is stated in the *Retnácara*, that a son capable of inheriting the paternal estate, not being blind or otherwise disqualified, is here designed; not one who has received assets left by the father, for he is suggested by the expression " who has received the estate."

CLXXI.

YÁJNYAWALCYA:—He who has received the estate of a proprietor leaving no son *capable of business*, must pay the debts *of the estate*, or, on failure of him, the person who takes the wife *of the deceased;* but not the son whose *father's* assets are held by another.

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The order in which perſons are liable for debts, is therefore as follows: in the firſt place the debtor himſelf; on failure of him, his ſon competent *to inherit and manage the eſtate;* on failure of ſuch, the ſon's ſon; if there be no *ſuch grandſon,* the great grandſon, wife, uncle, or other heir, who has ſucceeded to the eſtate, or the brother or other guardian of it: ſhould there be no ſuch perſon, he who has taken the widow; if there be none ſuch, a ſon incompetent *to inherit or to manage the eſtate.* So the *Chintámeni, Retnácara, Dípacalicá,* and the reſt. However, the obligation on an *incompetent* grandſon to pay the debt is not noticed in thoſe works under this head. This point ſhall be diſcuſſed. On failure of him, the great grandſon, or remoter deſcendant, who has not received property left by his anceſtor, may pay the debt if he be willing, but not otherwiſe. Such is our opinion. It ſhould be affirmed, ſince it is poſitively ſaid in the *Dípacalicá,* 'uncles and other kinſmen, capable of taking the heritage of one who leaves no iſſue, *muſt pay the debt.*'

That the debtor is bound to pay the debt, appears from many texts (CLXVI 2, &c.); that on failure of him, his ſon, if competent, *muſt pay the debt, appears* from the latter part of the text quoted (CLXVI 2), *and from other texts;* on failure of him, the ſon's ſon if competent (CLXX); on failure of him, the great grandſon or other repreſentative who has received aſſets (CLXXI). And the text of YÁJNYAWALCYA juſt cited is thus explained: of a debtor who leaves no competent ſon, but had aſſets for the payment of his debts, he who ſucceeds to the eſtate muſt pay the debts: on failure of him, the perſon who has taken the widow; and not, if either of thoſe be *amenable,* a ſon, while the aſſets are held by another, or when the aſſets left by his father have been transferred from him to another. How can the aſſets be held by another, notwithſtanding the exiſtence of a ſon? The ſon may be diſqualified, having been born blind, deaf, or the like; or he may be incompetent by reaſon of diſeaſe, minority, or the like: and the author of the *Mitácſhará* remarks, that the aſſets may be held by another notwithſtanding the exiſtence of a vicious ſon (Book V, v. 316).

The text is read, *putrô nányáśritadravyah,* not the ſon whoſe *father's* aſſets are held by another, inſtead of *putrô' nanyáśritadravyah,* the ſon whoſe *father's* aſſets are not held by any other; if

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the aſſets be held by another, although the ſon be living, that ſon is not liable for the payment of his father's debts. It is ſtated in the *Retnácara*, that this *part of the ſentence* is connected with the phraſe "muſt pay the debt;" the conſtruction therefore is, the ſon ſhall not be compelled to pay the debt while the aſſets are held by another. Such is the intention of that gloſs.

If no perſon have taken the widow, the incompetent ſon muſt pay the debt.

CLXXII.

NÁREDA:—Of the ſucceſſor to the eſtate, the guardian of the widow, and the ſon *not competent to the management of affairs*, he who takes the aſſets becomes liable for the debts; the ſon, *though incompetent, muſt pay the debt*, if there be no guardian of the widow, nor a ſucceſſor to the eſtate; and the perſon who took the widow, if there be no ſucceſſor to the eſtate, nor *competent* ſon.

This text may be thus interpreted: whoever takes the aſſets, whether he be *the regular* ſucceſſor to the eſtate, guardian of the wife, or ſon *of the deceaſed*, but incompetent *to the management of affairs*, is ſucceſſor to the eſtate, and muſt pay the debts. It is ſo expounded in the *Retnácara* and other works. Its object has been already ſtated: "If there be no guardian of the widow, &c.;" if no perſon have the care of the widow or of the eſtate; if none take the widow or the eſtate; the ſon, that is, the incompetent ſon, muſt pay the debt. This, however, intends only a caſe where he may be juſtly liable, namely a caſe of incompetency ariſing from minority or the like; for no one has ſaid, that a ſon *born* blind, or otherwiſe *excluded from* inheritance, ſhall pay the debts. "And the guardian of the widow;" ſhould there be no ſucceſſor to the eſtate, nor competent ſon, the guardian of the widow is liable for the debts. The object of this has alſo been already explained.

We hold that great grandſons are *only* liable for the payment of debts, *if willing to pay them;* under the rule of VISHNU (CLXVIII).

(CLXVIII). According to the *Dípacalicá*, they may be liable for the debts, under the text of YÁJNYAWALCYA (CLXXI). Still, however, that portion of the text of YÁJNYAWALCYA, which is there adduced, muſt be reſtricted to the caſe of *a* conſenting *deſcendant;* for it has the ſame import with the rule of VISHNU (CLXVIII).

Should a man leave both a competent ſon and a ſucceſſor to his eſtate, by whom ſhall his debt be paid? Let it not be anſwered, if a competent ſon be living, there can be no other ſucceſſor to the eſtate. If that ſon live in the houſe of his maternal grandfather, in conſequence of the partiality of that grandſire, or in conſequence of the grandſire's being childleſs; and the father live as a coparcener with his *own* brothers and the reſt; when the father dies, that ſon may poſſibly not take the trouble of obtaining his heritage. Or, a ſiſter lives in his father's houſe; and the ſon, through natural affection, has not taken the eſtate. In ſuch caſes there may be another ſucceſſor to the eſtate, although a ſon be *left.* Nor ſhould it be objected that in ſuch a caſe the competent ſon is firſt liable for the debts, as already propounded. It would be unreaſonable that the ſucceſſor to the eſtate ſhould not be firſt liable for the debts. That whole argument is wrong; for CÁTYÁYANA declares the ſucceſſor to the eſtate liable for the debts, only in the caſe where the ſon is incompetent.

CLXXIII.

CÁTYÁYANA:—The judge ſhall compel a ſon to pay the debt of his father, provided he be involved in no diſtreſs, be capable of property, and liable to bear the burden; but in no other caſe ſhall he compel the ſon to pay his father's debt:

2. If the ſon be afflicted with diſeaſe, or under *the* age *fit for buſineſs,* and *another* perſon be found to have taken the aſſets, the judge muſt enforce payment from him; or, on failure of ſuch perſons, from one who has taken the widow.

Not driven to a foreign country by the oppreſſion of the king or the like, is implied in the phraſe " involved in no diſtreſs." " Capable of property ;" not born blind, deaf, or the like. " Liable to bear the burden ;" not a minor or the like. If there be ſuch a ſon, him the judge ſhall compel to pay the debt. But if the ſon be afflicted with diſeaſe, or be an infant ; or if he be involved in diſtreſs, or blind from his birth, and ſo forth ; and if another perſon be found to have received the aſſets, from that perſon alone ſhall the judge enforce payment ; if there be none ſuch, from the perſon who has taken the widow. Such is the ſenſe of the text. Here " afflicted with diſeaſe " is merely an inſtance. Therefore, ſhould a man die childleſs, the ſame rule ſhould be adduced.

CLXXIV.

VRĬHASPATI :—The ſucceſſor to the eſtate is liable for the debt, if the ſon be involved in diſtreſs; but the perſon who takes the widow ſhall be liable for the debt, on failure of ſucceſſors to the eſtate.

The ſenſe of the text is obvious. Let it not be objected *, as inconſiſtent with reaſon, that on this conſtruction one would take the aſſets of the deceaſed, and another pay his debts. Inconſiſtency with reaſon may not be objected to that in which Sages and Authors concur. In fact, when there is a competent ſon, no other can be *the legal* ſucceſſor to the eſtate. In the caſe ſtated, why does he not obtain his own father's eſtate from his uncle and coparcener? If he voluntarily yield it to his uncle, that uncle is not the ſucceſſor to the eſtate *of the deceaſed*, but the occupant of property given by the ſon. It is the ſame in the ſuppoſed caſe of a ſiſter. Conſequently there is no occaſion for a ſpecial text on this point ; the ſon muſt pay the debts, in conſequence of his own voluntary act. But if the uncles or the reſt forcibly withhold the aſſets, the king ſhall compel the delivery. If, through any accident, that cannot be done, he muſt enforce payment from the

* The author reſumes the argument interrupted by the quotation of the texts clxxiii and clxxiv.

the uncle and the rest; for the assets of the father make *the holder of them* liable for the payment of his debts.

Consequently the intention of the texts of YÁJNYAWALCYA and the rest is this: after the decease of the debtor, if he left no assets, or if there be assets which have devolved on the son, the debt must in either case be paid by the son, agreeably to the order of payment propounded by NÁREDA (CLXIX). If there be no son, it must be paid by the son's son: and here also the order of payment propounded by NÁREDA must be assumed from parity of reasoning. If there be neither a son nor a son's son, or if there be a son or grandson, to whom the assets have not descended, but are held by some other person, the debt must be paid by him who has received the assets; on failure of such, by him who has taken the widow; or, on failure of him, by the son or grandson, who was competent to take the heritage. But an incompetent grandson is not liable for the payment of debts, any more than an incompetent son.

The text of YÁJNYAWALCYA is read *putrŏ'nanyáśritadravyah*, the son whose *father's* assets are not held by another: and that reading is approved by MISRA and VIJNYÁNÉSWARA. Under the expression, "whose *father's* assets are not held by another," may be understood one who has taken his father's assets, as well as one whose father had no assets. The difference between the two interpretations consists in this: if a son, through generosity or the like, do not exact his father's property from his uncles and the rest, he must pay the debt *according to one opinion*, and need not pay *it according to the other*, as is evident. The preferable interpretation may be determined by the wise; but ultimately one only can be admitted.

Or, if a solvent person contract a debt and die, and his son be a minor, or be gone to a foreign country, and his uncle or other *kinsman*, or some stranger, through tenderness for that son, take care of the estate, such person alone may be understood from the expressions, "he who has received the estate of a proprietor," "the successor to the estate," and "a person who has taken the assets." As the guardian recovers money due from others to the estate, so must he pay the debts out of the estate. But if there be no assets, or if no such person take care of the estate, the person who has taken the widow must discharge the debt. If no

widow be left, or if a widow furvive but no perfon take *the guardianfhip of* her, the fon, or the fon's fon in order, fhould pay the debt, acquiring funds by any practicable means. If there be neither fon nor grandfon, and if no perfon take the widow, or if no widow furvive, and if the great grandfon or remoter defcendant, or the brother or other *collateral relation*, take the property left by the deceafed, he fhould difcharge the debt. Such is the fenfe of the text of YÁJNYAWALCYA. Accordingly it is faid in the *Dípacalicá*, the uncles or other *collateral heirs* of the deceafed who leaves property. This fhould be admitted as *an* accurate *interpretation*. Both are fuggefted by the ambiguous terms of the texts.

All authors concur in opinion, that a fon, being blind or deaf from his birth or the like, fhall on no account be liable for the payment of debts. But, according to the *Dípacalicá*, the debt fhould be paid by an incompetent fon, if no perfon have taken the widow. The word "incompetent" intends fuch difqualification, as is ftated by CÁTYÁYANA, difeafe and the like (CLXXIII). But the author of the *Mitácfhará* ftates two cafes: a fon, grandfon, or any other perfon, who has taken the affets, muft difcharge the debt; on failure of fuch, he who has taken the widow; on failure of him, any fon not *born* blind or the like; and on failure of him, the great grandfon or other reprefentative who takes the heritage: they are again mentioned to fhow the pofitive obligation of paying debts then only when they have received affets. Or the perfon who takes the widow, that is, who takes a widow falling under the fourth defcription of women wilfully libidinous, or the firft of twice married women*, becomes liable to the payment of debts on failure of fucceffors to the eftate; if there be no fuch perfon, the fon who would have been competent to receive the heritage, not being blind *from his birth* or the like; on failure of him, any perfon who has taken the widow *muft pay the debt*, under the text of NÁREDA (CCXXII.)

Thefe rules of decifion fhall be fucceffively difcuffed. In the firft place, if the father die, or refide abroad or the like, the competent fon is liable for the payment of his debts. Natural deceafe, and *civil demife or* retirement in the order of devotion, are

* V. ccxx. and Book IV, V. clviii 2 & 8.

are ſimilar. Concerning abſence in a foreign country, the rule of VISHNU above cited (CLXVIII) propounds a diſtinction.

CLXXV.

NÁREDA:—The father, or, *if the family be undivided*, the uncle, or the elder brother, having travelled to a foreign country, the ſon ſhall not be forced to diſcharge the debt until twenty years have elapſed.

Here *the mention of* " uncle or elder brother" intends the payment of debts contracted by them; and that muſt be underſtood in the order above-mentioned, when there is any ſufficient cauſe, ſuch as the uncle or brother leaving no ſon. Its further application will be mentioned. The particle " or," repeated in the text, is indefinite, comprehending all perſons holding aſſets of the debtor.

CLXXVI.

CÁTYÁYANA:—If the father be at home, but afflicted with a chronick diſorder, *though not without hope of recovery*, or live in a foreign land, *but expected in time to return*, his debt ſhall be paid by his ſons after a lapſe of twenty years.

" Twenty years;" after a lapſe of twenty years, for the text coincides with that of NÁREDA (CLXXV). And this muſt be underſtood when the cure of the diſeaſe is poſſible, or when the return of the abſent *parent* may be expected. But, when the diſtemper is deemed incurable, or the return of the abſent parent is impracticable, the ſon ſhall pay the debt of his father, though living, as if he were dead. The creditor need not wait twenty years.

The *Retnácara*.

Or *the expreſſion uſed* in the text, " if the father be at home," *may ſignify*, if he be living; that is, if it be aſcertained that he

is alive. Hence, if no intelligence be received, during twelve years, concerning any man who has travelled to a foreign country, the law requires his ſon to perform obſequies and the like, preſuming his death; if the ſon did not then pay the debt until twenty years had elapſed, that would be inconſiſtent with common ſenſe, and with the reaſon of the law. The *following* text of CÁTYÁYANA is authority for this poſition.

CLXXVII.

CÁTYÁYANA:—A creditor may enforce payment of ſuch debts from the ſons of his debtors, who, though alive, are incurably diſeaſed, mad, or extremely aged, or have been very long in a foreign country, *provided their ſons have aſſets of the debtor.*

Both "diſeaſed" and "mad" are here mentioned by the ſame rule by which two names for kine are uſed, the one in a generick ſenſe, the other in a particular ſenſe; or to include inſanity or intoxication ariſing from the uſe of drugs or the like. "Extremely aged;" incapacitated by old age for *the management of* affairs. "Very long in a foreign country," and not expected to return. "Such," or of this kind; an epithet of debt intended to exclude debts contracted for ſpirituous liquors and the like. This will be ſubſequently explained. Here, from the concurrence of the preceding text (CLXXVI) it appears, that the creditor need not wait twenty years; for the expreſſion "very long in a foreign country" would be ſuperfluous, the ſenſe would be the ſame with the preceding text, and there would be a needleſs repetition.

CLXXVIII.

VRÍHASPATI:—A debt of the father being proved, it muſt be diſcharged by his ſons, even in his lifetime, if he were blind *or deaf* from his birth, or be

be degraded, infane, or afflicted with a phthifis or leprofy, or other hopelefs diforder.

"Blind from his birth;" born blind: for the word *játi* fignifies both clafs and birth. "Degraded" muft be underftood of one who is averfe from *the neceffary* penance. "Phthifis, or leprofy, or other diforder;" this is illuftrative of any incurable difeafe. The *Retnácara.*

"Phthifis," or marafmus: when a father has been twenty years afflicted with any difeafe whatfoever, his debt muft be difcharged by his fon; the amplified glofs "phthifis, leprofy, or other incurable or hopelefs diforder," would therefore be unmeaning; hence the interpretation fuggefted in the *Retnácara*, that, in the cafe of phthifis or the like, the creditor need not wait twenty years, fhould be admitted. VÁCHESPATI MISRA and others concur in this expofition. But the *Párijáta* and MISRA add, if the father, through indigence, be *wholly* unable to difcharge the debt, it muft be paid, even though the family be divided, by his fon who is able to difcharge it, or, on failure of him, it is reafonable *that it fhould be paid* by his grandfon fo circumftanced. Since the father, being born blind, was incapable of inheriting his own father's eftate, and is unable to acquire property himfelf, he may be confidered almoft *literally* as moneylefs.

"Even though the family be divided;" even though his father be feparated: *the debt muft be paid* by a fon whofe father is feparated from his own brothers and the reft. Or it may be explained, 'by a fon who is feparated from his uncles and the reft;' for no diftinction is expreffed.

The firft cafe fhall be now confidered.

CLXXIX.

VRĬHASPATI:—A fon born before partition has no claim on the paternal eftate, nor a fon born after it on the portion of his brother, whether in refpect of property or debts; nor have they

any

any claims on each other, except to purification and an oblation of water, *if either of them die**.

A fon born before partition has no concern with the debts contracted, or property acquired, by his father after partition; he is incapable of taking the eftate and paying the debts: and the fon born after partition has no concern with the portion of his brothers; *that is*, with the debts undertaken by his brothers, and the property received by them on partition. But all are qualified for purification and oblations of water. By this text, fo explained, it is curforily intimated that a fon need not pay a debt contracted after partition. Still, however, if the father be unable to difcharge the debt, and there be no fon in coparcenary *with him* able to difcharge it, that debt muft be paid by *another* fon who is able to difcharge it, even though he be feparated from the family (CLXIX). But if there be no fon amenable *for the debt*, it muft be paid, even though the family be divided, by a grandfon who is competent *to the inheritance and management of the eftate*. Although the text of YÁJNYAWALCYA, which directs generally that the debt fhould be difcharged by the fon or by the fon's fon (CLXX), may be expounded as relating to a grandfon not feparated from his coheirs, ftill, if either the fon or grandfon, who are thus placed on a fimilar footing, may be liable for the debts even after partition, is it not reafonable to affirm the fame in refpect of the other? That is actually expreffed in the *Párijáta;* "it is reafonable," &c. and that part of the fentence relates to the grandfon. Thus may the law be concifely expounded.

Should the father die, or enter into an order of devotion, or be long abfent in a foreign country whence his return cannot be expected, or be afflicted with a hopelefs diforder, or be blind from his birth, the debt muft be immediately difcharged by his fon competent *to inherit and manage the eftate;* but if he be long abfent in a foreign land, whence his return may be expected and fo forth, it muft be paid after the lapfe of twenty years. If the father, having been born blind, was excluded from the patrimony, and the fon be capable of inheritance and be not feparated from his father, it muft be paid by that fon out of his own property.

* Book V.

perty. But if ſuch a father were neverthelefs able to acquire property, it muſt be then paid out of the property acquired by him: this is demonſtrably true. If there be two ſons both able to diſcharge the debts, and one be not ſeparated, and the other be ſeparated, it muſt be paid by that ſon only who is able to diſcharge the debts and lives in coparcenary (CLXXIX). It is the ſame in the caſe of re-union *after ſeparation*, by parity of reaſoning. But if the ſon, who lives in coparcenary, be unable to pay the debt, or if there be none ſuch, the debt muſt be paid by the ſon able to diſcharge it, even though he be ſeparated from the family; on failure of him, by all the grandſons in the male line, who are able to diſcharge it, not ſingly by the ſon of him who was born after partition. But, ſhould the debtor have aſſets, then, while he lives, it muſt be paid by his ſon or grandſon out of his property only; after his death, his effects deſcend, on failure of ſons born after partition, to the other ſons, or to all the grandſons of the male line whoſe fathers are deceaſed; his debt muſt therefore be paid by them out of his aſſets. In that caſe, ſince they have received aſſets, there is no difference between a ſon and a grandſon. It is the ſame alſo in reſpect of the great grandſon. On failure *of lineal male deſcendants* within the degree of great grandſon, the heritage devolves on the widow and ſo forth; and the debts muſt alſo be paid by the widow or other heir in *the* order *of ſucceſſion.* But if there be no aſſets, the debt ſhould in the firſt place be diſcharged by the ſon out of his own property, or, on failure of him, by all the grandſons of the male line; the great grandſons are under no neceſſity of paying the debt, as has been already noticed.

But, if there be a ſon born after partition, and the father die, and the ſons with whom partition was made ſurvive, but the ſon born after partition die leaving male iſſue; ſince he who was born after partition was alone entitled to the heritage of his parent, his ſon can alone claim the aſſets; not the ſons born before partition, nor their offspring: hence the debt ſhall not be diſcharged by them, but ſhall be paid in ſucceſſion, or jointly, by the ſon born after partition and by his ſon, whether they have or have not aſſets of the debtor. Yet, ſhould they be unable to diſcharge the debt, *the rule of payment* muſt be underſtood as before.

But,

But, ſhould a ſon ſeparated from his father make a partition with his own ſons of the property acquired by himſelf, and, bringing the remainder of his eſtate, live re-united with his father, and other ſons be born to him; ſhould his father die, and afterwards he alſo deceaſe, his ſons, as well thoſe born before as thoſe born after partition, ſhall equally ſhare the property, and pay the debts of their grandfather; but the ſons born after partition ſhall alone take the property, and pay the debts of their father. Thus may the law be conciſely ſtated. This method ſhould be followed in all caſes; the ſubject will be fully conſidered under the title of Inheritance.

Since the text of YÁJNYAWALCYA (CLXX) does not expreſs *that the debt ſhall be paid* in ſucceſſion *by the ſons or by their ſons*, may it not be well aſſerted that the debt muſt be diſcharged jointly by ſons and grandſons? No; for VRĬHASPATI, ordaining that the debt ſhall be paid without intereſt by a grandſon, ſhows a leſs obligation on the grandſon than on the ſon; it is therefore incongruous to affirm, *that debts ſhould be paid* jointly with the grandſons. Accordingly the *Mitácſhará* expreſſes, on failure of the father, the ſon *ſhall pay his debt;* on failure of ſons, the grandſon.

But the author of the *Smrĭtiſára* adds, a debt contracted after partition by the father or kinſman on his own ſole account, muſt be paid by his ſon and the reſt, if he be *long* abſent in a foreign land: in this caſe only is the period *of twenty years* preſcribed; not in the caſe of a debt contracted for the ſupport of an undivided family or the like, for the parceners are alſo concerned in ſuch a debt. They are equally bound *with* the ſingle parcener, by whom they are ſheltered. The precept is not grounded on a latent motive: hence, when payment *is demanded*, in conſequence only of the declaration *or engagement* of a ſingle *parcener*, without any *oſtenſible* cauſe *for contracting the debt*, then only is a lapſe of time required by that precept; but a debt contracted for the ſupport of the family muſt be paid before *that time elapſe*, as ordained by another text of YÁJNYAWALCYA.

CLXXX.

YÁJNYAWALCYA:—If one of *two or more parceners*

or undivided kinſmen contract a debt for the ſupport of his family, and either die or be very long abſent abroad, the other parceners or joint-tenants ſhall pay it.

The creditor need not wait a ſpecifick time; for there is no authority *for ſuch a ſuppoſition:* the time allowed ſolely concerns divided kinſmen. MISRA.

"Family" ſignifies all the perſons entitled to maintenance. Since all *the parceners* are concerned in the debt, a lapſe of time is not required: the gloſs ſhould be ſo interpreted from the preceding ſentence. The meaning is, ſince all partake of the benefit ariſing from money borrowed by a ſingle parcener, all are bound for the debt. "They are equally bound with the ſingle parcener, by whom they are ſheltered;" a ſingle parcener, contracting debts and ſo forth, ſupports all the perſons entitled to maintenance: he is as it were their ſcreen or umbrage, ſheltering them from ardent diſtreſs. Conſequently, whatever is done by him may be juſtly conſidered as the act of all; and all being legally bound for the debt, it is deemed a debt actually contracted by thoſe among them who are forthcoming: it is therefore improper to require a lapſe of time.

Muſt not the *literal* ſenſe of the text be preſerved, even though it be inconſiſtent with the reaſon of the law; elſe a ſin would be committed by deviating from the precepts of Sages? This poſition may therefore be thus reconciled: when a ſin is ſtated in deviating from the precepts of Sages, that intends a precept, the grounds of which are not apparent; but this is a precept of demonſtrable law, founded on reaſoning: ſuch is the notion adopted in the *Smrĭtiſára*.

"Hence, when payment *is demanded*, &c.;" payment muſt be made in conſequence of an engagement common to all the parceners; the creditors may have lent the money to any one of them; it was not neceſſary that ſuch an engagement ſhould be expreſsly declared when the debt was contracted: ſuch is the ſenſe *of the gloſs. Or that gloſs may be thus interpreted:* payment muſt be made in conſequence of one, that is a ſingle, declaration or text of Sages, *or in other words*, a text independent of reaſoning,

ing, ſuch as the following text: even without a cauſe *of payment ariſing* from the *joint* receipt of the loan, that is, without the payer's having been concerned in the receipt of the loan, or having enjoyed *the benefit of* it, or the like, payment muſt[c] be made; ſo interpreted by reference to the preceding phraſe. In the laſt caſe only is a lapſe of time required by the texts of Sages. But a debt contracted for the ſupport of the family, excluded from the purport of the preceding text, muſt be paid before the lapſe of twenty years. This the commentator alſo notices.

"Parceners or joint tenants" (CLXXX); heirs, ſuch as brothers and the reſt. "For there is no authority, &c.;" for there is no expreſſion in this text denoting that the creditor ſhould wait the lapſe of time, nor does the reaſon of the law ſuggeſt it. It ſhould not be objected, that a period *of ſuſpenſion* may be deduced from the concurrence of the text above cited (CLXXV). Since it is proved from the reaſon of the law that no delay ſhould be allowed to ſons and the reſt living in coparcenary, there is no difficulty in reſtricting the text of NÁREDA to ſons and others with whom partition has been made. Such is the notion adopted in the *Smrĭtiſára*: and that is proper; for, immediately after the text cited, NÁREDA thus proceeds,

CLXXXI.

NÁREDA:—A debt contracted before partition by an uncle, or a brother, or a mother, for the ſupport of the family, all the parceners or joint-tenants ſhall diſcharge *.

If it were intended that an interval of ſuſpenſion ſhould alſo be underſtood in this caſe, the enunciation of the preſent text would be vain; for that ſenſe was already conveyed by the preceding text (CLXXV). It is therefore evident, that the three texts of NÁREDA relate to diſtinct ſubjects, as follows: a father being dead, his ſons ſhall diſcharge his debt (CLXIX); a debt muſt be paid, after the lapſe of twenty years (CLXXV); a debt contracted before partition by a father or kinſman for the ſupport of the family, muſt be *immediately* paid (CLXXXI).

This

* See Book V. v. 371.

This text, expreſſing "before partition" as well as "for the ſupport of the family," cannot have the ſame import with that which preſcribes a time. But the firſt text (CLXIX) relates to a debt contracted by the father on his own ſole account; in that caſe only is a lapſe of time required.

But, ſays MISRA, CHANDÉSWARA holds, that a debt contracted before partition by a father or kinſman, who travels to a foreign land whence his return may be expected, muſt be paid by his ſon or other parcener after waiting twenty years. This however has been haſtily ſaid; for, in fact, CHANDÉSWARA had declared in his own work, 'if that father were ſo circumſtanced as to be incapable of participating *in the patrimony*, and his ſon be not ſeparate in regard to property, his debt muſt be paid *by the ſon*; but if the father, though he be ſo circumſtanced, have any ſeveral property, it ſhall be diſcharged by him alone. Yet, if the father be wholly unable, and the ſon be able, to diſcharge the debt, it ſhall be paid by the ſon.' Here the expreſſion, "ſo circumſtanced as to be incapable of participating *in the patrimony*," deſcribes the father as indigent in conſequence of his excluſion from the patrimony. "Not ſeparated in regard to property" relates to the ſon; it ſignifies reſiding together, and partaking of the ſame food: the conſequence is, that if the father any-how acquired wealth, it would be joint property. Such a father therefore contracts a debt for the ſupport of his *own* family, and travels on account of his affairs to a foreign country, but his return may be expected; in ſuch a caſe muſt his debt be paid by his ſon? and muſt it be paid after the lapſe of twenty years, or within that period? On theſe queſtions the rule formerly mentioned muſt be adduced; for no diſtinction has been ſtated. Conſequently it ſhall only be paid after the lapſe of twenty years.

Since no time is ſpecified in the text of VRĬHASPATI (CLXXVIII), ſhould not the debt of a man blind from his birth or the like be paid without waiting a lapſe of time? However the law may be in that caſe, ſtill, when a father is afflicted with a fever, or ſimilar diſorder, and his ſon is not ſeparated in regard to property, it appears from parity of reaſoning, that the debt ſhall only be paid by his ſon after a lapſe of twenty years; without diſtinguiſhing whether it were contracted for the ſupport

of

of his family, or for the borrower's own uſe. Such appears to be CHANDESWARA's notion.

On this we remark, that, although no limitation have been expreſſed, there is no difficulty in reſtricting the text (CLXXV) to debts which have been contracted on the borrower's ſole account; for, as it does not expreſs a debt contracted on his ſole account, ſo likewiſe it does not expreſs a debt contracted for the ſupport of the family. However, even in that caſe it muſt be ſuppoſed that payment cannot be expected *from the debtor himſelf* within ten or fifteen days. In fact it muſt only then be paid when the burden devolves on the ſon. That virtually is the meaning.

VRĬHASPATI propounds a ſpecial rule in reſpect of undivided parceners.

CLXXXII.

VRĬHASPATI:—A debt contracted by the father acting for his coheirs ſhall be all paid by the ſon, if the father have been long abroad; but if the father die, the ſon ſhall pay only the ſhare of his father, and never that of another debtor.

Five brothers live together, and partake of the ſame food; one, acting for all, contracts a debt on his own judgment, or with the conſent of all, for the ſupport of the family, and afterwards travels to a foreign country; the other brothers are alive, and incompetent *to the management of affairs*, or they are not living; and the abſent brother has, or has not, made a partition with his brethren: in ſuch a caſe that debt muſt be paid by his ſon out of the common ſtock; on failure of that, out of his proportionate ſhare; or, on failure of that again, out of his own *ſeveral* property.

"A debt contracted by one acting for his coheirs;" ſince all are equally bound for that debt: or, *it may be literally interpreted*, contracted by one *of the coheirs* ſerving as umbrage to ſcreen *the others* from ardent *diſtreſs*. Payment by the ſon is ordained, provided the father be living; but if he die, the ſon ſhall only

pay

pay the ſhare of his father, and not the ſhares of his uncles and the reſt. The meaning is this: while he lives, the acts done by his ſon are in a manner done by the father himſelf; hence payment then made is on the part of the father; conſequently, the debt contracted by the father alone is virtually paid by him alone, and a contribution of ſhares is not therefore proper in that caſe. But, when the father is deceaſed, the debt contracted by him for the ſupport of his own brothers and the reſt, ſhould, on failure of him who actually contracted the debt, be paid by thoſe only for the ſupport of whom it was contracted: this is *clearly* ſettled. That proportion of the debt, which was contracted by the father for the maintenance of his own immediate dependants, muſt be paid by his ſon; not the ſhares of the reſt; he is exonerated by the Sage, becauſe the burden had not yet devolved on the ſon at the time when the debt was contracted.

In the *Vivâda Chintâmeni* the text is read, *pitrarnam* the debt of his father, inſtead of *pitranſam* the ſhare of his father. If that reading be authentick, it may ſtill be expounded, 'the ſhare of the father *in the debt*.'

CLXXXIII.

NÁREDA:—Any one ſurviving parcener may be compelled to pay another's *ſhare of a* debt contracted by joint-tenants; but, if they be dead, the ſon of one is not liable to pay the debt of another.

"Joint-tenants;" undivided kinſmen: and this muſt be underſtood of a caſe where the debt was contracted for the ſupport of the family. If it were contracted for the borrower's ſole uſe, the whole debt muſt be paid by his ſon alone, as is juſt. The reaſon of the law proves this; but to ſtate it at large would unneceſſarily ſwell the work.

But the author of the *Retnâcara* thus expounds the text of VRĬHASPATI (CLXXII); a debt of the father, for which he was bound together with another jointly and ſeverally, ſhall be *all* paid by the ſon, both the ſhare of the father, and the ſhare of

of the joint-debtor, if the father have been long abroad, *and the other joint-debtor cannot be found;* but if the father die, the ſon ſhall only pay the ſhare of his father. The ſame author thus interprets the text of Náreda (CLXXXIII); any one ſurvivor may be compelled to pay the whole debt, which was contracted by perſons jointly and ſeverally bound; but if all the joint-debtors die, their ſons ſhall pay their proportionate ſhares of the debt: no one ſhall be liable to pay the whole. He conſiders both theſe texts as relating to a ſubject ſimilar to that of partnerſhip in commerce.

Here it ſhould be remarked, that if one of five brothers die, but leave a ſon, from parity of reaſoning that ſon may be impleaded like one of the brothers: this expoſition ſeems reaſonable to ſuch men as we are. Here 'die' intends alſo civil death; for religious mendicity is ſimilar to natural death. A degraded man, who is averſe from the requiſite penance, is alſo in effect ſimilar to one naturally deceaſed.

CLXXXIV.

Cátyáyana:—Among perſons jointly and ſeverally bound *for a debt,* whoever is found, may be compelled to pay *that debt;* the ſon of one *long* abſent abroad, *may be compelled to pay* the whole *debt,* but the ſon of one deceaſed *need only pay* his father's ſhare.

Of perſons contracting a debt, for which they are jointly and ſeverally bound, if one alone be found, he may be compelled to pay the whole debt; or if a ſon, whoſe father has been long abſent abroad, be found, he alſo may be compelled to pay the whole; but if a ſon, whoſe father is dead, be found, he can only be compelled to pay his father's ſhare, and not the whole ſum.

CLXXXV.

Vishnu:—A debt contracted *jointly and ſeverally* by

by parceners, ſhall be paid by any one of them who is preſent and amenable; and ſo ſhall the debt of the father, by *any one of* the brothers before partition; but after partition, they ſhall ſeverally pay according to their ſhares of the inheritance.

A debt contracted by parceners, or by perſons jointly and ſeverally bound, muſt be paid by any one of them, who is forthcoming; and ſo muſt the debt of the father by any one of the undivided brethren, who is forthcoming; but brothers who have made a partition, ſhall pay their proportionate ſhares. The texts of CÁTYÁYANA and VISHNU are thus expounded by the author of the *Retnâcara*. He conſiders the text of CÁTYÁYANA, and part of the text of VISHNU, as relating to a ſubject ſimilar to that of partnerſhip in commerce. The ſubject of partnerſhip in commerce may be thus exemplified: four traders, ſeverally ſubſcribing their names to the ſame written inſtrument, with one accord contract a debt for the purpoſe of traffick: in like manner four prieſts may contract ſuch a debt for the ſupport of their families or the like. The commentator conſiders the laſt half of the text of VISHNU as relating to the payment of their father's debt by brothers.

Both theſe texts may alſo be expounded as relating to debts contracted by undivided brethren, like the text of NÁREDA and VRĬHASPATI. In their reſult both interpretations of the text are accurate. The texts of CÁTYAYANA and VRĬHASPATI are obviouſly applicable to ſubjects ſimilar to that of partnerſhip in trade; for they literally expreſs "a debt contracted under the ſame ſhade," and "among perſons ſheltered by the ſame ſhade." The text of VISHNU is obviouſly applicable to undivided brethren, ſince it expreſſes "a debt contracted by parceners."

If five brothers have the ſame abode, and partake of the ſame food; and one then contracts a debt for the ſupport of the family, with the aſſent of the reſt, or from his own judgment, and dies or travels to a foreign land; afterwards all *the ſurvivers* make a partition, and by accident become poor, but are ſubſequently enriched by wealth which they themſelves acquire: in ſuch a caſe, who ſhall pay that debt? out of what property?

CLXXXVI.

Menu :—If the debtor be dead, and if the money borrowed was expended for the uſe of his family, it muſt be paid by that family, divided or undivided, out of their own eſtate.

" Dead " is illuſtrative *of civil death and the like.* " Out of their own eſtate ;" hence, if any one of the heirs, though they be ſeparate from each other, contract a debt for the ſupport of perſons whom all the heirs are obliged to maintain, and die, or be unable to diſcharge the debt, it muſt be paid by all the heirs.

The *Retnácara*.

It is ſtated in this gloſs, that partition had been made before the debt was contracted ; there is this difference *between the gloſs and the caſe ſuppoſed.* But in fact both are right. Accordingly Cullúcabhatta ſays, if he who contracted the debt be dead, and the money were expended for the ſupport of the families of all the brethren, as well divided as undivided, that debt muſt be paid by the divided and undivided brethren out of their own property.

If that debtor be living, he muſt pay the debt out of the *joint* eſtate of all *the brethren* ; or if it be true that they have no aſſets, he muſt pay it out of his own property. Should any one of them die leaving no ſon, what would follow ? Since the word " ſhare" does not occur in the text of Menu, the whole debt muſt be paid *by the ſurvivers* : this is a ſettled rule. It appears that the whole debt ſhall be paid by the ſurvivers, out of the eſtate of the deceaſed ; or, on failure of that, out of their own property. But it muſt not be deemed inconſiſtent with reaſon, that a debt contracted by one brother for the maintenance of divided brethren, ſhould be paid by another brother out of his own property ; for it is ſimilar to the caſe where a debt contracted by one of the aſſociated traders muſt be paid by another. In this caſe, the creditor need not wait twenty years, as has been already mentioned. It is thus declared by Vrĭhaspati and other Sages, that the ſon muſt pay the debt of his father : Cátyáyana diſtinguiſhes ſons.

CLXXXVII.

Cátyáyana:—On the death of a father, *his debt* shall in no case be paid by his sons incapable from nonage of conducting their own affairs; but at their full age, *of fifteen years*, they shall pay it in proportion to their shares; otherwise they shall dwell hereafter in a region of horror.

The father's debt must be understood. "By his sons incapable from nonage of conducting their own affairs;" by infants unable to discharge the debt. Such in effect is the sense. Consequently, if it can be paid by any persons during minority, it must be paid even during their minority: but how could it be paid during infancy and total incapacity? "At their full age;" at the age when they are able *to pay*. As a share of the father's heritage is received by a son whose father was joint-tenant with his own brothers and the rest, but who is himself separate, so must a proportionate share of his debt be paid by that son. But if his father were separate from his own brothers and the rest, or if he had no brothers, the whole debt contracted by him must be paid by the son. To explain these and similar distinctions, laws have been propounded. This text of Cátyáyana is intended to show, that those whom former texts have declared liable to the payment of debts, must pay them at their full age. Consequently "father" is here illustrative of a general sense. How should a debt, though contracted by the party himself, be paid during a period of disability? But a debt contracted by his father and the rest, is still more distant.

"Otherwise," if they do not pay it at their full age, the sons and the rest shall dwell hereafter in a region of horror. It appears therefore, that sons and the rest are positively bound to pay such debts. Náreda declares the same necessity.

CLXXXVIII.

Náreda:—Even though he be independent, a son

 incapable

incapable from nonage of conducting his affairs is not *immediately* liable for debts.

The same:—Fathers desire male offspring, for their own sake, *reflecting*, "this son will redeem me from every debt whatsoever due to superior and inferior beings:"

2. Therefore, a son begotten by him should relinquish his own property, and assiduously redeem his father from debt, lest he fall to a region of torment.

3. If a devout man, or one who maintained a sacrificial fire, die a debtor, all the merit of his devout austerities, or of his perpetual fire, shall belong to his creditors.

"Independent;" separate. It is consequently intimated that there is no other person, such as undivided brothers and the rest, amenable for the payment of that debt. He who has neither father nor mother is deemed independent, as will be mentioned. Hence a minor son is bound to pay the debt: but in that case only a delay is allowed by NÁREDA. Such is the import of the text.

"Whatsoever" relates to the "debts due to superior and inferior beings." What is due to deities, holy sages, and progenitors, is a debt due to superior beings; debts due to men are due to inferior beings. But HELAYUDHA, considering this as solely relating to debts due to human beings, expounds the terms, degrading debts *due* to creditors. In the *Retnácara* it is remarked, that they are degrading by reason of the extreme sin consequent to debts undischarged.

But MISRA cites the text of CÁTYÁYANA (Book III, Chap. iv, V. 15): it is therefore his opinion, that an independent son, or one who has neither father nor mother, and is not under the age of sixteen years, is liable for the payment of debts. It may be here noticed incidentally, that "until his sixteenth year" signifies to the *nearest* limit of his sixteenth year: consequently he is a minor until the close of his fifteenth year. The construction

ſtruction of the text is this: 'an adoleſcent is alſo called a minor.' But *ſtrictly* the term *(pōgenda)* is applicable only to a child under the age of ten years, agreeably to the text cited by SRÍDHARASWÁMÌ.

Infancy extends to the fifth year, childhood is limited to the tenth: adoleſcence continues to the ſixteenth year, when puberty *commences**.

"Under eight years," or before the commencement of his eighth year, he is an infant *(śiśu)*: and he alſo is a minor, *but* diſtinguiſhed *from an adoleſcent.* Another is alſo diſtinguiſhed, called a young infant *(cumāra)* to the commencement of his fifth year; agreeably to the *ſame* text cited by RAGHUNANDANA, "infancy extends to the fifth year." The uſe of this diſtinction regards penance or expiation and the like. But here minority muſt be taken to the end of the fifteenth year; and this muſt be underſtood of a computation by vulgar or *ſāvanah* time, from the day of his birth. Afterwards he is adult or competent to affairs, as is expreſsly declared by CÁTYÁYANA. But a certain author has remarked, that if a youth become converſant with affairs before that age, in conſequence of auſpicious fortune merited in a former exiſtence, or if a youth remain unacquainted with affairs beyond that age, through ill auſpices, both theſe ſhould be conſidered accordingly *as adult or as under age.* But Sages have mentioned an age near to which puberty may be expected.

From all this detail it appears that the ſon ſhall alſo dwell hereafter in a region of horror, if he do not redeem his father from debt.

CLXXXIX.

VRĬHASPATI:—A houſekeeper ſhall diſcharge a debt contracted

* A part only of the verſe was here cited. The diſtinctions may be thus recapitulated: a minor *(bála)* is in early infancy to the end of his fourth year, and called *cumāra;* in law he is an infant to the end of his ſeventh year, and in this period of his life is called *s'is'u;* he is called a boy *(pógenda)* from his fifth to the end of his ninth year; and his adoleſcence as *ciſóra* continues from the tenth to the end of the fifteenth year.

contracted by his uncle, brother, ſon, wiſe, ſervant, pupil, or dependants, for the ſupport of the family *during his abſence.*

It is here implied, that a debt contracted even by others for the ſupport of the family, muſt be diſcharged by the houſekeeper.

The *Retnâcara.*

The meaning therefore is, that ſince the terms conclude in the plural number, which conveys the ſenſe of "and the like," *therefore* maternal uncles and the reſt, as well as other perſons, are comprehended in the text. The principle of the law may be here ſtated: ſhould a ſon competent to affairs be at hand, a debt contracted by divided brethren or the like, unauthorized by him, is not valid: but in the caſe of parceners, if any one of five brothers forbids the contracting of the debt, and is able to ſupport the family by other means, the debt contracted by another brother is due by the borrower alone, and ſhall not be paid by him who oppoſed the debt. Yet if the money *ſo* borrowed be uſed by him who oppoſed the debt, or by his dependant, being unable to ſupply ſufficient funds for the ſupport of the whole family, or of his own immediate dependants, it muſt be diſcharged by him. A little has been thus mentioned on a wide ſubject. In fact the whole relates to fraudulent practice. Yet if he who reſiſted the debt, maintain his dependants out of the money borrowed againſt his conſent, without any fraudulent practice, he muſt nevertheleſs diſcharge the debt.

CXC.

Menu:—Should even a ſlave make a contract *in the name of his abſent maſter* for the behoof of the family, that maſter, whether in his own country or abroad, ſhall not reſcind it.

"A ſlave;" a mancipated ſervant and the like. "That maſter," literally the ſenior, but here ſignifying his lord.

The *Retnâcara.*

By the term uſed *(jyâyas)* is ſignified beſt, as well as eldeſt; but

but here, metaphorically, the maſter. This is expreſſed in the gloſs, " but here ſignifying his lord." In fact, he is beſt, or pre-eminent, ſince he ſupports the family.

CXCI.

NÁREDA :—Whatever debt has been contracted for the uſe of the family by a pupil, an apprentice, a ſlave, a wife, or an agent, muſt be paid by the head of the family.

" An agent ;" one who acts *in his ſervice.* " A debt ;" money taken up *on loan.* The *Retnácara.*

" A pupil ;" one who learns texts of ſcripture. " An apprentice ;" a ſtudent *in general.* " A ſlave ;" born in the houſe of his maſter or the like. " An agent ;" a hired ſervant or other perſon who has engaged in ſervice for a day, a month, or the like. By this text it is declared, that a debt contracted for the behoof of the family, by any perſon whomſoever connected with that family, is valid.

CXCII.

VISHNU :—*A debt of which payment has been* previouſly promiſed, or *which was* contracted by any perſon for the behoof of the family, muſt be paid by the houſekeeper.

" A debt " muſt be here ſupplied. A debt, even though contracted for the purpoſes of traffick; but of which payment has been promiſed by the houſekeeper, muſt be paid by him ; but a debt contracted for the benefit of the family by any perſon whomſoever ſhall be paid by the houſekeeper. Such is the expoſition of the *Retnácara.* " Promiſed " here ſignifies " of which payment has been promiſed."

CXCIII.

CÁTYÁYANA:—What has been borrowed for the benefit of the family, or during diſtreſs, (while *the principal* was diſabled, ſeized *by the king*, or afflicted with diſeaſe,) or in conſequence of a foreign invaſion,

2. Or for the nuptials of his daughter, or for funeral rites; all ſuch debts contracted by *one of* the family, muſt be diſcharged by the chief *of that family*.

"Chief" is in the ſixth caſe with an active ſenſe. It muſt therefore be diſcharged "by the chief" *of that family*.

The *Retnácara*, RAGHUNANDANA, and others.

"Diſabled;" happening to be then incapable of earning wealth. "Seized, or afflicted with ſickneſs," *(grĭhíta-vyádhitē)*; "ſeized," that is, ſeized by the king; the terms "ſeized" and "diſeaſed," are joined in appoſition: the ſenſe therefore is, while the principal is confined by the king for ſome offence, or is afflicted with diſeaſe. Or the appoſition may be in the form named *carmadháraya*, the firſt term being *grĭhí* houſekeeper, and the laſt term *itah* gone, as in the example, 'having bathed and being ſmeared *with ſanders wood*;' or in the ſame form of compoſition, but reſolvable into this ſenſe, "and that houſekeeper be gone," that is, be abſent. By the import of the word houſekeeper, the religious anchoret is excluded; for an anchoret does not return to his houſe. Since he could not diſcharge a debt, the term taken generally would be unmeaning; therefore it is limited by the annexed term, houſekeeper.

Or the text may be read *grĭhita-vyádhicē*, contracting a diſeaſe; an appoſition in the form called *bahubríhi*, inſtanced in the expreſſion "a monkey aſcending a tree." Should the principal be ſo circumſtanced, a debt contracted by any perſon connected with him, (the text muſt be ſo ſupplied,) is *a debt* contracted during diſtreſs. All ſuch debts muſt be paid by the chief of the family: this conſtruction will be ſuggeſted by the ſubſequent verſe.

verse. A debt may also be contracted by a person unconnected with him, employed by one who is connected with him: such is the practice.

"In consequence of a foreign invasion;" a debt contracted for the purpose of expatriating by one who absconds through fear of a foreign prince, is *a debt* contracted during distress. "For funeral rites;" for the obsequies of a parent or the like.

Consequently, the chief of the family being disabled, a debt contracted by any person connected with him, for the support of that family, for guarding against the violence of a king, for the cure of a distemper, and (if *grìhìta* be expounded absent householder) for defraying the travelling charges of one who wishes to expatriate with the view of acquiring wealth, for relief from a general calamity, for the celebration of a daughter's nuptials, or for the performance of obsequies for a parent or the like, must be paid by that chief of the family. Such is the sense. It is illustrative of a general meaning, and intends any debt contracted for the accomplishment of some business, which being omitted even in consequence of poverty, sin or calamity must ensue.

Grìhìtam vyádhité is a reading found in some places, particularly in the *Dáyatatwa*: the sense is obvious; "*contracted during sickness.*"

The principle of the law should be noticed: in the case of a daughter's nuptials, for so much expense only as preserves from infraction the usage of the principal's family, may another contract debts; not for the celebration of splendid nuptials: the whole of what is borrowed for unauthorized expenses, must be paid by the borrower; but expenses which are suitable to the usage of his family must necessarily be admitted by a master able to discharge them. Consequently, should he be seized with a distemper, or unwarily go to a foreign land, a debt may be contracted by any person connected *with him*, to defray the expenses required for such a purpose, as estimated by five persons. This may be apprehended by the wife.

Must a debt contracted for the behoof of the family, without the consent of the principal, be paid by him or not? On this point Cátyáyana propounds *a text already cited* (IX).

A debt contracted by a son, a slave, and the rest, even with-

out

out the aſſent of the abſent principal, for the maintenance of his family, that abſent principal muſt diſcharge: this BHRĬGU approves. Such is the conſtruction *of the text* (IX).

CHANDÉSWARA.

Here it ſhould be noticed, that, in the expreſſion "even without his aſſent," the word "even" connects this caſe with that of aſſent. For inſtance; the chief of a family intending a journey to a foreign country, thus addreſſes his ſon, ſervant, or the like: "the family muſt be maintained by thee, contracting debts, or otherwiſe obtaining funds;" or he went abroad with ſuch an intention *unexpreſſed:* in theſe caſes his aſſent is declared or implied. But, if it be not ſo, he does not aſſent; ſtill, however, the debt muſt be diſcharged by the chief of the family.

CXCIV.

NÁREDA:—A father muſt equally pay the debt of his ſon, contracted either by his own appointment, or for the ſupport of his family, or in a time of diſtreſs.

"A time of diſtreſs;" a ſeaſon of calamity. The *Retnácara.*

This ſhall be here diſcuſſed: when a father, afflicted with a diſeaſe, remains altogether at home; and his ſon, ſlave, or the like, contracts a debt for the ſupport of the family, but with the knowledge of the father; muſt the debt be in that caſe paid by the father or not? It is anſwered, three disjunctive particles occurring in the ſentence, "either by his own appointment, &c." his own appointment and the reſt are ſtated as three grounds of payment, mutually unconnected. Conſequently, ſince *the borrowing* for the ſupport of the family is unconnected with the father's appointment, that debt muſt be diſcharged by the father in the caſe propoſed. In like manner, "abſent," in the preceding text (IX), is illuſtrative of a general ſenſe.

It might be here obſerved, that, if the principal, when he went abroad, or when he was himſelf ſeized by a diſtemper or the like, forbade the contracting of debts, but his ſon or the reſt, ſlighting his commands, contract debts for the ſupport of the family,

mily, thofe debts need not be paid in fuch cafes by the father; for there can be no reprefentative in a matter exprefsly forbidden by the principal: and "unforbidden" muft be fupplied in the texts which notice debts contracted for the fupport of the family. Let it not be objected that inconfiftence with approved ufage muft follow, fince a mafter, thus relieved from diftrefs by money borrowed by his flave, even though forbidden by himfelf, would be exonerated from that debt. The money has been expended by the compaffionate flave or lender, for a moral purpofe. If the loan were made for the fake of accumulating wealth, why did the party lend it in breach of an exprefs prohibition? For this fault, the lofs may fall on the flave, or on the lender.

Again; if the mafter of the family forbid the contracting of debts by his fon and the reft for the fupport of his family, and the fon or other perfon, flighting that prohibition, do contract debts and fupport the family, ftill the fame rule fhould be affirmed. It muft, however, be admitted, that the chief of the family is guilty of the offence confequent on refufing fupport to his family. In fact, that debt fhould in fuch a cafe be difcharged by the mafter of a family, who ftrives to obferve a virtuous conduct; but the king fhall not compel him to pay it. Such in effect is the fenfe. However, it is a great fin on the part of him who travels to a foreign country, *previoufly* forbidding the contracting of debts, without confidering the neceffary end of fupporting his family. Here the fourth particle *(vá)* has a connective fenfe, for it is declared that the particle *vá* denotes difjunction, comparifon and connection. Confequently the full meaning is, that the father ought to pay all fuch debts.

CXCV.

CÁTYÁYANA:—What a man has promifed, in health or in ficknefs, for a religious purpofe, muft be given; and, if he die without giving it, his fon fhall doubtlefs be compelled to deliver it*.

That

* Cited in Book IV, Chapter iv. at V. 3, and there expounded as relating to gifts.

That concerning which a man has declared, " this ſum muſt be paid by me to that man ;" or, in other words, what a man has promiſed, his ſon ſhall be compelled to deliver ; but, if he die after delivering it himſelf, it ſhall not be *again* paid by his ſon : this the Sage declares, " if he die without giving it." It is intimated, by the expreſſion " for a religious purpoſe," that the ſon is under no neceſſity of delivering what has been promiſed to harlots or the like. The text is expounded by JÍMÚTAVÁHANA and others as relating to this ſubject.

But we thus expound it : the maſter of the family being gone to a foreign country, or diſeaſed, or the like, a debt contracted by his ſon, his ſervant or the like, and made known to him, muſt be paid by the chief of the family when he returns from that foreign country, or recovers from the diſeaſe. But if he die without paying it, the debt muſt be diſcharged by his ſon, or by the ſucceſſor to the eſtate, or other perſon liable to the payment *of it;* on failure of the firſt reſpectively, by the next in ſucceſſion. " For a religious purpoſe," or from a religious motive ; that is, with a view to the ſtrict obſervance of duty : the conſtruction is, he muſt pay it on that account ; meaning, that otherwiſe duty is violated.

By all this detail the obligation on a ſon to diſcharge his father's debt has been propounded. The payment of a debt contracted for the ſupport of the family has been incidentally mentioned. A diſtinction in regard to the payment of debts by a grandſon ſhall be now delivered.

CXCVI.

CÁTYÁYANA :—A debt of the paternal grandfather, which is proved, or which is partly liquidated, muſt be diſcharged *by the grandſon ;* but never ſhall a debt contracted for immoral uſes, or which was conteſted by his father, be paid *by the grandſon.*

" Proved ;" eſtabliſhed by evidence. " Which is partly liquidated ;" which his father had begun to pay, but of which a

balance

balance remains due. "Contracted for immoral uſes;" incurred for loſſes at play, for ſpirituous liquors or the like. Sums due for loſſes at play, for ſpirituous liquors and the like, ſhall be ſubſequently noticed. "Conteſted by his father;" which he diſputed, averring that it was not due by him. Such a debt need not be paid by the grandſon, according to the *Retnácara*.

"Or which is partly liquidated;" the particle may here bear a connective ſenſe. It conſequently connects the debt partly liquidated with that which is proved to be due. But, in fact, "partly liquidated" is mentioned as confirming the certainty in reſpect of the debt. Accordingly another text, cited in the *Retnácara*, omits the terms "balance of a debt liquidated."

CXCVII.

CÁTYÁYANA: — BHRĬGU ordains, that a debt devolving from the grandfather, which was proved, and acknowledged by the father, muſt be diſcharged by grandſons, if it were not contracted for immoral uſes, nor *already* paid by the ſons.

2. The rule ſhall be the ſame in regard to the debts of the grandfather, which have not been diſcharged by *other* grandſons, nor by his *own* ſons: but a debt of the grandfather ſhall be paid by his grandſons without intereſt.

"Proved;" eſtabliſhed by evidence. "Not contracted for immoral uſes;" not incurred for loſſes at play, for ſpirituous liquors and ſo forth. "Nor *already* paid;" not *already* diſcharged.

A debt of his grandfather, not paid by the ſons of the eldeſt ſon, nor by his own father or uncles, muſt be diſcharged by another grandſon. Such is the ſenſe of the ſecond verſe. But a certain author propoſes a reading on the ſecond meaſure of this verſe, *na dattam vápi tat ſwatah*, inſtead of *na dattam vápi tat ſutaih;* and expounds it, a debt of the grandfather, which has not been already paid or acquitted by the grandfather himſelf, nor

by

by his ſons*, the father and uncles *of the perſon in queſtion*, muſt be diſcharged by the grandſon. " *Swatah* " has the ſenſe of the third caſe.

CXCVIII.

CÁTYÁYANA :—After the death of his father, debts *of his grandfather* muſt be carefully diſcharged by the grandſon; but a debt contracted by an anceſtor is not recoverable from the fourth in deſcent.

A debt which was originally contracted by the fourth anceſtor or great grandfather, reaching his deſcendant, namely the great grandſon, recedes, *or is not recoverable:* the great grandſon or remoter deſcendant need not diſcharge it. Such is the *literal* ſenſe according to the *Retnácara*. It follows, of courſe, that the ſon or grandſon muſt diſcharge it.

CXCIX.

NÁREDA :—An undiſputed debt of the grandfather, which has been ſucceſſively due by him and his ſons, but has remained undiſcharged by them, ſhall be paid by his grandſons; but it is not recoverable from a perſon who is fourth *in deſcent from the debtor*.

" Succeſſively due ;" due by the grandfather and father conſecutively.

The *Retnácara*.

A debt contracted by the grandfather, affects him in the firſt place, next his ſon, and laſtly his grandſon. " Proved," which occurs in preceding texts, has been explained ' eſtabliſhed by evidence.' In what does the proof conſiſt?

CC.

* We muſt therefore read in the firſt meaſure "*putraih*" by ſons, inſtead of "*pautraih*" by grandſons.

CC.

Cátyáyana:—But ſhould a conſiderable ſum be claimed, ſo much only as the creditor or claimant may prove by the evidence of witneſſes, ſhall he recover as a juſt debt.

If a conſiderable ſum be claimed; if the claimant aver, "ſo much was borrowed of me by this man, or by his father, or his grandfather," and the borrower, his ſon, or grandſon, anſwer *the plaint* by denying its truth, ſo much only as the creditor juſtifies by the evidence of witneſſes, or proves to be due, ſhall he recover from the debtor; not the whole ſum which he claimed, *but does not prove*. Such is the explanation, according to the *Retnácara*. Hence, if a large ſum be claimed, and part be proved and part unproved, it is not right to affirm that the whole claim is falſe, becauſe it was partly falſe. This is declared *by the text*. "By the evidence of witneſſes;" a mere inſtance of evidence in general. Chandéswara.

Since it is not ſpecified from whom it ſhall be recovered, it follows, that the whole of what is proved muſt be paid by him, whoever he be, by whom ſuch debts ought to be paid. But it muſt be paid without intereſt by a grandſon, as has been already noticed. On failure of a grandſon, the great grandſon, or other perſon who ſucceeds to the eſtate, muſt be underſtood in the regular order of ſucceſſion to heritage. Váchespati Misra here obſerves, that ſuch debts only as would be payable by a ſon, ſhall be paid by another heir and the reſt: but it ſhall be paid by theſe without intereſt; for intereſt has not been ordained in this caſe. Such only is the diſtinction.

What debts of the father ſhould be paid by a ſon, Menu declares by excepting others (CLI).

"Money due by a ſurety;" this is reſtricted to ſureties for appearance or for honeſty. The *Retnácara.*

Conſequently ſurety in the ſecond verſe denotes alſo *the ſurety for good behaviour*.

"Idly promiſed;" an unprofitable gift *promiſed*.

The *Retnácara.*

It in effect ſignifies a gift promiſed with no view to a moral purpoſe.

MENU:—For religious purpoſes, gifts are made to prieſts; for the ſake of fame, to muſicians and actors.

"Loſt at play (CLI);" due in conſequence of gaming. It conſequently ſignifies any debt contracted for a ſtake in playing with dice, or for the purchaſe of things uſed in gaming. If a fine to the king be incurred by gaming with dice, and that fine cannot be paid without contracting a debt, ſhould the offender contract a debt for that purpoſe, ſhall it be diſcharged *by his ſon* or not? The anſwer is, although that debt be occaſioned by gaming with dice, yet, being contracted in a time of diſtreſs, it muſt be diſcharged. "Due for ſpirituous liquors;" in conſequence of drinking ſpirituous liquors; borrowed for the purpoſe of *buying* intoxicating liquors, and ſo forth.

This is reſtricted to money due on theſe accounts by perſons not authorized to game or drink ſpirituous liquors.

The *Retnácara.*

Gaming is authorized by the ſyſtem of law on the feſtival called *Dyútapratipet;* and the uſe of ſpirituous liquors is authorized by law on the celebration of the ſacrifice named *Sautrámeni;* to certain mixed claſſes the *conſtant* uſe of ſpirituous liquors is allowed by cuſtom: a debt contracted by the father for theſe purpoſes, in ſuch circumſtances, muſt be paid by his ſon. Such is the notion ſuggeſted in the *Retnácara.*

"What remains unpaid of a fine or toll;" for inſtance, a fine being due to the king for ſome offence, if the father die after paying half the amount of that fine, the balance ſhall not afterwards be paid by his ſon. 'Nor what remains unpaid of a toll.' Toll ſignifies a duty of cuſtom payable at wharfs and the like. For example: the father, having obtained indulgence on the grounds of friendſhip or the like, has only diſcharged half of the regulated cuſtoms which are paid to the king's officers by traders reſorting to markets or the like on the buſineſs of traffick; returning home he happens to die: in that caſe, the remainder

need not be paid by his ſon. The ſame term (*'sulca)* alſo ſignifies a nuptial preſent given to a bride at the time of her marriage and the like.

CCI.

VRĬHASPATI:—The ſons are not compellable to pay ſums due by their father for ſpirituous liquors, for loſſes at play, for promiſes made without any conſideration, or under the influence of luſt or of wrath; or ſums for which he was a ſurety, *except in the caſes before mentioned:* or a fine, or a toll, or the balance of either.

Sums due for ſpirituous liquors, or loſſes at play, money idly promiſed, and the balance of a fine or toll, have been already explained. A promiſe made under the influence of luſt, or under the influence of wrath, ſhall be ſubſequently explained.

The *Retnácara.*

MISRA expounds preſents idly made, preſents idly promiſed. He conceives, that were they actually given, they muſt neceſſarily be delivered, becauſe the property of the father is deveſted.

CCII.

GÓTAMA:—Money due by a ſurety, a commercial demand, a toll, the price of ſpirituous liquors, a loſs at play, and a fine, ſhall not involve the ſons *of the debtor.*

Debts originating in ſuretiſhip, commerce and the reſt, ſhall not involve the ſons; they ſhall not be paid by the ſons of the debtor. The *Retnácara.*

This appears, on a curſory view, to be the purport of the gloſs: a debt incurred by becoming a ſurety (for inſtance, a man has become ſurety, and the debtor dying, the ſum becomes due by the ſurety; a debt ſo incurred), a debt contracted for commerce,

for a toll, for ſpirituous liquors, for a loſs at play, for a fine, need not be paid by the ſon of the debtor; he ſhall only diſcharge a debt incurred on a moral conſideration, or for an uſual cauſe, or for the ſupport of the family.

VÁCHESPATI MISRA expounds "ſums for which he was a ſurety," ſums due by a debtor, for whoſe appearance or honeſty he was ſurety; theſe, and ſums become due by the father in commerce or the like, ſhall not involve the ſons. He expounds the text, ſums due by a ſurety for the appearance or honeſty of the debtor, becauſe he thinks the ſon of a ſurety for payment muſt neceſſarily diſcharge the debt, under the text of MENU (CL). Money due in commerce may be thus inſtanced: ſome perſon, making a contract with this man's father, delivered certain ſums of money to him, as the price of barley or the like, on an agreement in this form, "I ſhall receive an advantage above the quantity which may be equivalent to the ſum advanced at a price to be arbitrated by five perſons:" the vender dies, after delivering to the buyer goods equivalent to the advance at the arbitrated price; the remainder need not be delivered by the ſon. Again: the price of ſpirituous liquors, the coſt of dice and the like, a ſtake at play, a fine originally ſmall, or the balance of a large fine, need not be paid by a ſon after the death of his father.

Both theſe opinions ſhall be diſcuſſed: and firſt, the gloſs of the *Retnácara*. Since the word "debt" does not occur in the text of GÓTAMA, what ſhould ſuggeſt "a debt contracted in conſequence of ſuretiſhip?" It would be inconſiſtent with the reaſon of the law. If the father were ſurety for payment, the debt, though contracted by a ſtranger, muſt be paid by his ſon; as is ordained in the ſyſtem of juriſprudence: how can it be reaſonable that the ſon ſhould not in this caſe diſcharge the debt though actually contracted by his father? It is alſo ſaid, that a debt contracted on a commercial account, need not be paid by the ſon: how can that be pertinent? Why ſhould not the debt be paid by the ſon, who participates in the benefits of that traffick, or is *at leaſt* naturally competent to benefit by it? If the term *(śulca)* be explained a nuptial preſent inſtead of a toll, it has been already mentioned, that a debt, though contracted by another on this account, muſt be admitted by the maſter of the family; why ſhould not the ſon admit ſuch a debt contracted by his father? If it be

explained

explained a toll payable at a wharf or the like, that is a caufe confiftent with ufage *and good morals*; it appears, therefore, that it ought to be paid. Why fhould not a debt contracted for the payment of a fine be difcharged by the fon? Since a man atones for his crime by paying the fine, a debt contracted to difcharge a fine is contracted on a moral account. Let it not be objected, that this text, being placed under the title of Debt, pofitively concerns debt alone; and, fince it is a rule not to ftrain a text, even money borrowed, or otherwife due, on account of a fine, need not be paid by a fon. In his glofs on the text of MENU above cited (CLI), CULLÚCABHATTA fays, after the death of his father, a fon is not liable for the payment of a fine or toll, or the balance of either, which was demandable from his father. He does not fay, that a debt contracted on account of a fine need not be paid.

CCIII.

VYÁSA alfo declares:—Neither a fine, nor a toll, nor the balance due for either, fhall be *neceffarily* paid by the fon of the debtor; nor any debt for a caufe repugnant to good morals.

On this text the authors of the *Retnácara* comment: fince the balance of a fine is fuggefted by the *general* term "a fine," and is neverthelefs repeated, the fenfe muft be, that if the amercement be great, it muft be paid, but not the fmall arrear of fuch a fine; but if the amercement be fmall, no part of it need be paid *by the fon*: confequently "fine," in this text, fignifies an inconfiderable fine; and "toll," an inconfiderable toll. In like manner, fince VYÁSA and MENU have noticed, under the title of Debt, fines and the like which are not debts, it is not reafonable to explain the words fine and toll, which occur in the text of GÓTAMA, as fignifying debts contracted for fuch caufes. Confequently "debt," in the glofs of the *Retnácara*, fignifies *money due*, *or* fums fimilar to debts. It therefore coincides with the glofs of MISRA. Or the text of GÓTAMA may be expounded in this manner. The terms *may be connected*, and fignify a commercial

 mercial

mercial toll, or duties payable at wharfs and the like. "Commercial toll" may neverthelefs intend nuptial prefents alfo.

The expreffion in the text of VYÁSA (tranflated "any debt for a caufe repugnant to good morals") is explained by MISRA, 'excluded from ufual caufes.' Confequently that debt which is contracted for fome civil purpofe confiftent with the prefcriptive ufage of good men, muft be paid by fons and the reft; but if it be the reverfe, it need not be difcharged.

In fact, the import of the expreffion ufed by VYÁSA is this: after the death of the father, a fine due by him need not be paid by his fon; furely the balance of a fine need not be paid: but if the fon, erroneoufly paying a fine to the king, have left fome part of it undifcharged, and be now impleaded by any man, that fine, due by the father, was not payable by the fon, and therefore he fhall not difcharge the balance of it. Nor fhall he receive back what he had paid to the king: the fecond term is only propounded to forbid the payment of a mere balance. The difficulties which will be noticed, may be accordingly removed.

They are as follow: among the many various fines afcending to the higheft amercement, it is difficult to determine which fhall be deemed confiderable, which inconfiderable: and no reafon appears why an inconfiderable fine fhould not be paid, and why a confiderable fine fhould be paid. Again; if a very fmall part of the greateft fine have been paid by the father, it is agreed on all hands that his fon fhall not be compelled to difcharge the remainder: but in another cafe, he muft difcharge the whole fine due by the father, amounting to fomewhat lefs than that *greateft fine;* which forms a great difparity. This and other *objections may be urged.* A debt contracted for the making of a garden, pool, or the like, undertaken on religious confiderations, muft be confidered as incurred for religious purpofes. It appears that a debt contracted for the ftructure of a houfe, a garden, or the like, to be enjoyed by future generations, or for increafe of wealth *by commerce*, muft be paid by a fon who enjoys the benefit of it, or is competent to enjoy it. Even a debt contracted for the fake of wearing delicate apparel and the like, muft be paid by a fon, fince it has not been enumerated among debts which he need not difcharge. This is right. Some, however, think that this, like money idly promifed, need not be paid by the fon.

Here

Here an incidental obſervation may be made: when a man, unable to make immediate payment of tolls due at wharfs or the like, gives a ſurety to the king's officer, and both the merchant and ſurety afterwards die, it ſhall not in that caſe be paid by the ſon of the ſurety; for there would be great diſparity in requiring from the ſon of the ſurety payment of that which need not be paid by the ſon of the merchant himſelf. Conſequently, whatever muſt be diſcharged by the ſon of a debtor, that only need be diſcharged by the ſon of a ſurety for payment.

Cátyáyana explains promiſes made under the influence of luſt or of wrath.

CCIV.

Cátyáyana:—What a man has promiſed, with or without a writing, to give to a woman who had another huſband before, let the judge conſider as a debt contracted under the influence of luſt:

2. But what has been promiſed to gratify reſentment, by hurting *another*, or deſtroying *his* property, let the judge conſider as *a debt* incurred under the influence of wrath.

Hence the rule cannot be ſtrained. Misra.

Conſequently, when the expreſſion, "incurred under the influence of luſt," is taken in its literal ſenſe; what is promiſed by a man to his own wife might be conſidered as a debt incurred under the influence of luſt: to prevent ſuch wreſt, Cátyáyana has propounded this particular explanation.

What has been promiſed, with or without a written engagement, to a woman who had another huſband before, or, if that ſuffice not, what has been borrowed and given to her, is a debt contracted under the iufluence of luſt. The expreſſion, "a woman who had another huſband before," intends only a woman not *legally* married to the giver. The *Retnácara.*

Is not that which is promiſed to a woman who had another huſband before, alone conſidered as granted under the influence of

 luſt?

luſt? why ſhould the author add, "borrowed and given to her?" The objection is ill-founded, ſince "debt" would be unmeaning. "Not legally married," ſignifies not legally married to the party himſelf. Conſequently, whatever is promiſed, or borrowed *and given*, for the abduction of a woman with whom intercourſe is criminal, muſt be conſidered as a debt incurred under the influence of luſt.

The ſecond verſe is explained in the *Retnácara*; what is borrowed to give away for the purpoſe of deſtroying another's property, or injuring another man through reſentment, is a debt incurred under the influence of wrath. Here debt muſt be underſtood to complete the ſimilarity between engagements made under the influence of luſt and of wrath. The conſtruction therefore is, "that which has been ſo promiſed let the judge conſider as a debt incurred under the influence of wrath." It was firſt promiſed, and afterwards borrowed and given. Hence, reſentment being rouſed by mutual contention in reſpect of ſome effects, one promiſes them to prieſts, declaring, "I will give this to a prieſt;" not being able to give away thoſe effects, he wiſhes to give the value of them, but, unable to give it out of his own property, contracts a debt; that debt might be conſidered as incurred under the influence of wrath. To prevent ſuch wreſt, CÁTYÁYANA has propounded this explanation.

Theſe alone are called promiſes made under the influence of luſt or of wrath before the debt was contracted.—The *Retnácara*.

The meaning of the gloſs may be thus explained: when money has been promiſed to an adultreſs, or promiſed to gratify reſentment by injuring another or the like, it is curſorily explained, that ſuch are promiſes made under the influence of luſt or of wrath. Conſequently, a debt contracted to fulfil ſuch a promiſe, and money ſo promiſed, need not be paid by the ſon or other heir. But we explain "a debt contracted under the influence of luſt," an obligation ſimilar to a debt ſo *incurred*; the ſimilarity conſiſts in the contract of payment. Conſequently that only which was promiſed for the ſake of enjoying an adultreſs, conſtitutes an obligation incurred under the influence of luſt. Accordingly 'SÚLAPÁNI has delivered the following comment on a text of YÁJNYAWALCYA.

CCV.

YÁJNYAWALCYA:—A ſon need not pay, in this world, money due by his father for ſpirituous liquors, for luſtful pleaſures, for loſſes at play; nor what remains unpaid of a fine or toll; nor any thing idly promiſed.

Debts of his father incurred on account of ſpirituous liquors, or for the enjoyment of another's wife, or undertaken on account of gaming, for a fine, or for duties at wharfs and the like, a ſon need not pay. "Father" is here illuſtrative, ſuggeſting alſo his mother. 'SÚLAPÁNI.

Here the expreſſion, "incurred for the enjoyment of another's wife," excludes a debt contracted from a money-lender; elſe the author would have ſaid, money borrowed for the ſake of obtaining another's wife.

The author of the *Mitácſhará* has this gloſs: a debt incurred by a drinker of ſpirituous liquors, or under the influence of luſt for the ſake of enjoying a woman, or cauſed by loſſes at play, what remains due of a fine or toll, and money idly promiſed, that is, promiſed to impoſtors, bards, or wreſtlers; (for it is declared, "Fruitleſs is a preſent given to an impoſtor, a bard, a wreſtler, a quack, a flatterer, a knave, a fortune-teller, a ſpy, or a robber;") all ſuch debts incurred by the father, his ſon, or other heir, need not pay to the vintner and the reſt.

It appears from the expreſſion, "to the vintner and the reſt," that the price of ſpirituous liquors and the like, due by the father, need not be paid by the ſon to the vintner and the reſt. But in fact the interpretation ſuggeſted in the *Retnácara*, that even a debt contracted for ſuch purpoſes need not be paid by the ſon, ſhould be admitted; for the phraſe, which occurs in the text of VYÁSA, "nor any debt for a cauſe repugnant to good morals," ſhows that ſuch debts need not be diſcharged by the ſon. But MISRA has ſaid nothing expreſsly on this ſubject.

Yet a debt contracted by a father, for the payment of a fine to the king, ought to be diſcharged by his ſon; for the laſt term, in the following text, is expounded dominion over the ſenſes and a

 fine

fine imposed by the king; and because a fine has a moral purpose since it expiates guilt.

CCVI.

MENU:—By open confession, by repentance, by devotion, and by reading the scripture, a sinner may be released from his guilt; or by almsgiving, by dominion over the senses, or by a fine to the king (for the word *dama* admits both senses).

If a fine be an atonement, even the balance of a fine ought necessarily to be paid by a son; why have Sages ordained, in contradiction to the reason of the law, that it shall not be paid? The objection is ill founded; for the fine is cancelled by becoming a religious anchoret on the approach of death, and by other means. All authors have directed penance, not the payment of amercements, to expiate guilt, which is inferred from an actual disease to have been contracted in a former existence. Accordingly the fourth measure of the text cited (CCVI) is in some copies read, "or by almsgiving in case of his inability *to perform the other acts of religion*." It is, however, reasonable, that the balance of a fine should be paid by the son, if his father be absent; but, since the son is not his own master, the king cannot exact it by forcible means, or the like. This is a demonstrated inference.

In general it is settled that a debt contracted by a father shall be paid by the son with interest, or, on failure of him, by the grandson without interest: but all agree that only such debts as have not been excepted by any Sage need be paid. Therefore, a debt contracted for an immoral purpose, and money promised for such a purpose, or idly promised, or promised to the king or other person for the liquidation of a fine or the like, and so forth, need not be paid. Such is the full meaning of the law. Other debts must be paid by the successor to the estate, and the rest in order, on failure of persons first liable. But MISRA holds, that they shall be discharged without interest; he assigns as a reason, because it has not been declared in this case, as in that of a son, that interest shall be paid. CHANDÉSWARA,

SÚLAPÁNI,

SÚLAPÁNI, and the reſt, have not expreſsly noticed this point. To that *inference* it may be *therefore* objected, that every Sage, who ordains the payment of debts by a grandſon, declares that they ſhall be diſcharged without intereſt: but ſome Sages have directed that a debt ſhall be paid with intereſt by the ſon *of the debtor;* others have not noticed the queſtion of intereſt: conſequently, as no legiſlator has ordained payment with intereſt by ſucceſſors to the eſtate, ſo none have ordained payment without intereſt; the rule being therefore general, what then ſhould inhibit payment with intereſt? This ſubject has been ſufficiently diſcuſſed.

CCVII.

YÁJNYAWALCYA:—Neither ſhall a wife or mother *be in general compelled to* pay a debt contracted by her huſband or ſon, nor a father *to pay* a debt contracted by his ſon, unleſs it were for the behoof of the family; nor a huſband *to pay* a debt contracted by his wife.

CCVIII.

VISHNU:—Neither ſhall a wife or mother *be in general compelled to* pay the debt of her huſband or ſon, nor the huſband or ſon *to pay* the debt of his wife or mother.

CCIX.

NÁREDA:—A debt contracted by the wife ſhall by no means bind the huſband, unleſs it were *for neceſſaries* at a time of great diſtreſs: a man is indiſpenſably bound to ſupport his family.

2. A wife or mother ſhall not *in general* pay the debt of her huſband or ſon.

 This

This laſt hemiſtich is cited on the authority of MISRA.

Unleſs it were contracted for the ſupport of the family at a time of great diſtreſs, a debt incurred by a wife ſhall not bind her huſband: that is, it need not be paid by her huſband.

The *Retnácara*.

Both theſe texts of VISHNU and the other *legiſlator* relate to a wife of unequal claſs: but a wife of equal claſs muſt pay a debt contracted by them, even though experiencing no diſtreſs. Wives of unequal claſs are prohibited in the *Cali*-age; a text concerning the wife of equal claſs will be cited under the title of Inheritance. BHAVADÉVA.

This is liable to objection. Why is the general term "wife" taken in a limited ſenſe? Since it is a rule that "what might be ſuppoſed is excepted," what might be propoſed generally in reſpect of any perſon or thing, is alone ſpecially excepted as relating to that perſon or thing. For inſtance: it being ſtated generally that a father's debt ſhall be diſcharged by his ſon, an exception is made, that a debt contracted on account of gaming ſhall not be paid. But in this caſe there is no ſuch ſuppoſition. Why then is an exception propounded? It is anſwered, that Sages have excepted theſe caſes, apprehending the haſty ſuppoſition that payment might be required, becauſe theſe perſons are not unrelated to the debtor, and are naturally competent to take his aſſets. For example: the text above cited (CLXVII 2) is illuſtrative of a general ſenſe, and comprehends great grandſons, daughter's ſons, and the reſt. Conſequently, a debt ſhall not in general be paid by any other than a ſon, or a ſon's ſon; yet it muſt be diſcharged by heirs of every deſcription, if they have received aſſets. YÁJNYAWALCYA propounds an exception.

CCX.

YÁJNYAWALCYA:—A debt acknowledged *by her huſband*, or contracted by her jointly with her huſband or ſon, or contracted by the woman herſelf, muſt be paid by a wife *or mother*; no other debts ſhall a woman be compelled to pay.

"Acknowledged;"

"Acknowledged;" fully acknowledged. The *Dipacalicá.* It consequently signifies a debt admitted by her husband at the point of death.

"With her husband or *son*:" the particle is connective, and includes her son also: hence, a debt contracted jointly with her husband or son, must be paid by a wife or mother. For instance: her husband and son being incompetent *to the management of affairs*, and the woman herself being very active, she contracts a debt jointly with them: such a debt is meant. Or, the husband and son being incompetent, or being unable *to act* by reason of other occupations, she uses their names, or contracts debts in her own name from a moneylender: in either of these cases the debt is contracted by the woman herself.

CCXI.

CÁTYÁYANA:—A debt contracted jointly with her husband or son, or singly by the woman herself, shall be paid *by a wife or mother;* in such and in no other cases shall the debts contracted by them be paid by her.

CCXII.

NÁREDA:—If a wife be thus addressed by her lord at the point of death, *or just before a long journey,* "such a debt must be paid by thee," she must pay it, however unwilling, if assets were left in her hands.

"Debts contracted by them;" debts contracted by her husband and son. The *Retnácara.*

If the assets of the husband have been received by his wife, she must pay the debt, "however unwilling;" that is, even though she do not promise to pay it. But if the wife, so instructed by her husband at the point of death, in these words, "my debt must be paid by thee," do promise to discharge it, she must then pay

pay it, even though assets were not left in her hands. Such is MISRÁ's opinion; and he expresly declares it: 'a debt, acknowledged by her husband, must be paid by a wife; and so must a debt be paid by a childless widow, who has accepted the care of the assets, even though she have not accepted the burden of the debts; for she is successor to the estate.' It must be therefore understood, that the debts of her husband must be discharged by the widow, who has accepted the care of the assets, under the text of YÁJNYAWALCYA (CLXXI).

This appears also to be the opinion of CHANDÉSWARA; *for he says* in the *Retnácara*, "at the point of death" is illustrative of a general meaning. It therefore comprehends also one who intends a journey to another country, or retirement in another order. But even an instruction incidentally addressed to the wife by her husband, though not diseased or the like, requiring her to pay this debt, must be considered as given with a view to *the probability of* decease. This and other points must be considered.

CCXIII.

NÁREDA:—A childless widow must pay the debt of her sister enjoining payment; or whoever receives the assets left by that *sister*, must pay her debts.

On the death of one of two sisters left as coparceners in the house of their father, who had no male issue, the debt of that sister must be discharged by the surviving sister enjoined to pay it. Such is the sense of the first hemistich. Or any other who takes the succession must pay that debt. The *Retnácara*.

VRĬHASPATI also directs, that a father *should* pay a debt contracted by his son.

CCXIV.

VRĬHASPATI:—A debt contracted by a son shall be paid by the father, if he promised payment; or he may pay it from affection to his son: but unless he promise, he cannot be compelled.

"If

"If he promifed payment," *or authorized the contracting of the debt*; for inftance, if the father told the creditor "lend money to my fon," or if he told his fon "borrow money to maintain your own grandmother."

"From affection to his fon:" having contracted a debt unauthorized by his father, the fon dies; if his father, reflecting, "fhould the debt remain unpaid, my fon will go to a region of horror," be difpofed to difcharge the debt through affection to his fon, he may pay it; but otherwife he need not pay it: confequently, a debt contracted by a fon need not be paid by his father, unlefs fpontaneoufly, or in confequence of a promife.

CCXV.

CÁTYÁYANA:—By the general rule of law, a father need not pay the debt of his fon; but he muft pay it, if, either at the time of the loan, or afterwards, he promifed payment.

"Promifed" here fignifies ftipulated at the time of receiving the loan; but promifed after receiving the loan is conveyed by the expreffion "fubfequently agreed to," or promifed afterwards. Son is here taken illuftratively. The *Retnácara*.

Thefe terms confequently fall within the fenfe of the expreffion ufed in the text of VRĬHASPATI, and the texts therefore coincide. "Illuftratively;" even a debt contracted by a wife or the reft, muft be paid by her hufband and the reft, if he gave previous or fubfequent affent, and the wife or other debtor be unable to difcharge it, or die. Here the word "fon" being confidered as illuftrative of a general fenfe, it may comprehend prefumptive heirs of the fame perfon, who live together, and partake of the fame food.

It is reafonable that the debt of a wife fhould in fome cafes be paid by her hufband.

CCXVI.

YÁJNYAWALCYA:—If the wife of a herdfman, a vintner,

vintner, a dancer, a washerman, or a hunter, contract a debt, the husband shall pay it; because his livelihood chiefly depends on the labour of such a wife.

CCXVII.

Vrihaspati:—The husband, being a vintner, a hunter or fowler, a washer, a herdsman, a shepherd, or the like, shall pay the debt of his wife: it was contracted in the concerns of the husband.

These husbands shall be compelled to pay the debts of their wives. "Because" should be here supplied; and the construction is, because those debts were contracted by them in the concerns of their husbands. Consequently, a debt may be contracted by a wife in the concerns of her husband, if they require such a debt.

CCXVIII.

Náreda:—Except the wife of a washer, hunter, herdsman, or vintner; for the livelihood of such a husband, and the support of his family, depend on her.

This must be connected for interpretation with the text above cited (CCIX 1), in this manner; a debt contracted by a wife, excepting the wife of a washer, &c. shall not be paid by her husband. The reason is subjoined: and here again "because" must be supplied; or the second particle has the causal sense.

Here "washer" and the rest are mentioned indeterminately. In fact, whatever be his class, if the husband's livelihood depend chiefly on the labour of his wife, he must discharge a debt contracted by her, whether he be a priest or a washer: but he whose livelihood does not depend on his wife, whether he be a washer or a priest, shall not pay his wife's debt. This is noticed by Misra: *he says*, 'in other cases also, wherever the wife

wife has the chief management, there is no reſtriction of claſs; the wife alone conducts all affairs, the huſband is abſolutely ignorant of every tranſaction.' Accordingly it is obſerved, that, in the province of *Cámarúpa*, almoſt every civil tranſaction is now conducted by women.

But this is merely a vague deſcription; for a debt contracted by the wife of a *Bráhmana* and ſo forth, for the ſupport of the family, muſt alſo be paid by the chief of that family. From the reaſon aſſigned, "becauſe his livelihood chiefly depends on the labour of ſuch a wife," it appears that any other perſons, of whom the livelihood depends on the labour of their wives, muſt pay the debt contracted by thoſe wives. This is admitted in the *Mitácſhará*. CHANDÉSWARA alſo makes the ſame obſervation; 'the circumſtance of his livelihood depending on the labour of his wife, is particularly intended; not any reſtriction of claſs.'

Here it ſhould be remarked, that they are only mentioned approximately; for, the huſbands being conſtantly occupied in waſhing clothes, attending cattle and the like, and therefore unable to provide neceſſaries for conſumption; and ſuch being the practice of certain *other* perſons, the providing of neceſſaries, like *other* houſehold buſineſs, is conducted by their wives alone. It is the ſame alſo in reſpect of huſbandmen and the reſt. However, a debt contracted by any married woman, who preſides *over her huſband's houſehold*, for the ſupport of her own brother's family, need not be paid by the huſband, any more than the debt of a father contracted under the influence of luſt; but other debts contracted by his wife muſt be paid by the huſband.

CCXIX.

CÁTYÁYANA:—A debt which is contracted by a wife or mother for the behoof of the family, when her huſband or ſon is gone to a foreign country, after authorizing *the loan*, muſt be paid by the huſband or ſon.

If a huſband or ſon, intending a journey to a foreign country, and being aſked by his wife or mother for food and raiment, tell

tell her, "contract debts;" the debt contracted by her muft be paid by him when he returns to his own home. "After authorizing the loan" is an approximate expreffion; for, even though he did not authorize it, the reafoning would be the fame.

The *Retnácara.*

The meaning is, if he go abroad without making provifion for her food, vefture, and the like. "When he is gone to a foreign country," is alfo illuftrative of a general fenfe; the fame rule fhould be admitted even though he remain at home. As is mentioned in the *Retnácara;* 'if he remain at home, or go abroad, without affigning any fubfiftence to his wife or mother.' This again is merely illuftrative; hence fuch a debt, even though contracted by a minor fon or daughter, muft be difcharged.

Here an obfervation may be made: a debt contracted by a mother for religious purpofes and the like, muft be difcharged by her fon. Suppofe a man whofe fon is an infant, and whofe wife has contracted a debt jointly with her hufband, but he dies, and his fon inherits his property; in that cafe, by whom fhould the debt be paid? By the fon alone, for he is under a double obligation to difcharge the debt: *under a civil obligation*, becaufe he holds affets; *under a moral obligation*, becaufe he is fon *of the deceafed*. But, if the debtor leave no affets, what fhould follow? It is replied, the fon neverthelefs ought to pay the debt; for redemption from debt is ftated as the benefit arifing from male offspring alone, fince the text of NÁREDA (CLXXXVIII) defcribes the wifh for male offspring as originating in the wifh to be liberated from debt: fenfual delights and male offspring are defcribed as the benefit accruing from a wife, by a text of the *Cálicá purána*, "a wife affords delight and male offspring;" confequently, if there be a fon produced by her, why fhould the wife, who has afforded other benefit, difcharge the debt? It is accordingly remarked in the *Mitácshará*, that 'a debt contracted by a wife jointly with her hufband, muft, on failure of the hufband, be paid by the wife, if fhe have no male iffue.'

Thus the divine CÁLIDÁSA fays in the *Raghuvansa*, "blifs in another world, and purity in this, fpring from devotion and alms; but progeny of a pure race contributes to profperity in the other world as well as in this." And again, in the fame work; "thinking oblations will be hardly obtained after me, *the manes*

of

of my anceſtors taſte the water, which I regularly offer, warmed by their ſighs*." Of thoſe paſſages the meaning is this: in another world, proſperity or auſpicious fortune, that is, the bliſs of heaven, is attained; in this world, auſpicious fortune, that is, the diſcharge of debts, is obtained: meaning debts to the deities, to progenitors, to holy ſages, and to men. The ſecond verſe is a ſpeech of a mighty king named DILÍPA, who was childleſs. It has this meaning: water has been preſented in the form of oblations to anceſtors by me DILÍPA; but my anceſtors taſte the water warmed by their ſighs: he aſſigns the cauſe of their ſighs; after me DILÍPA it will be difficult to obtain *oblations of* water: reflecting, "by whom will it be preſented, ſince he has no ſon," they emit warm ſighs. Therefore, wanting progeny, anceſtors alſo ſigh with ſorrow. It is hereby indicated, that *the birth of* a ſon relieves *anceſtors* from this miſery.

If there be both a great grandſon who has ſucceeded to the eſtate, and a widow, what ſhould be ruled? There is no difficulty in that caſe, becauſe whoever takes the eſtate of the deceaſed, muſt alſo maintain thoſe whom the deceaſed was bound to ſupport. Since food and raiment muſt neceſſarily be furniſhed to the widow; from parity of reaſoning, money ſufficient to diſcharge the debts of her huſband, which are payable by her, muſt alſo be ſupplied. But if the debtor leave no aſſets, his great grandſon does not ſucceed to any eſtate: the widow, however, has ſeveral property, ſuch as jewels and the like; the debt ſhould in that caſe be diſcharged by her out of that property, for Sages have declared her liable to the payment of debts. This and other points may be reaſoned by the wiſe. VISHNU alſo declares, that debts muſt be paid by thoſe who take the aſſets.

CCXX.

VISHNU:—He who takes the aſſets of a man leaving no male iſſue, muſt pay the ſum due *by him;* and *ſo muſt* he who has the care of the widow left by one who had no aſſets.

* The verſes are only quoted in part; I inſert the tranſlation at large.

"Sum" *(dhána)* here ſignifies debt; the ſame term in the ſubſequent phraſe, "who had no aſſets" *(adhana)*, ſignifies wealth. The *Retnácara.*

Two ſons have ſucceeded to the eſtate on the death of the father; in his life time the father had commanded one ſon to pay a certain debt; what is the rule of deciſion in that caſe? Although both be equally ſucceſſors and ſons of the deceaſed, that ſon only who received the injunction muſt pay the debt; for he is bound to fulfil his father's commands. But if the other ſon, conſidering it as a moral duty, ſpontaneouſly give his proportionate ſhare, it ſhould be accepted: elſe, how could the moral obligations of that other ſon be fulfilled; for, he who received the injunction ſhould fulfil his father's commands without diſtreſſing the ſecond ſon. Yet, if the ſecond ſon delude his brother by this declaration, "I am my father's ſon as well as he, I therefore will pay my proportionate ſhare of the debt," and do not pay *his ſhare of* the debt to the creditor, it muſt be fully diſcharged by him who received the command; for his father, dreading immoral conſequences, gave the order through apprehenſion of ſuch deceit or the like. If a father, in ſuch a caſe, give land or ſimilar property to any one ſon with ſuch an inſtruction, ſurely the debt muſt be diſcharged by him alone; and he ſhall take the whole property given by his father *on this conſideration*, and his proportionate ſhare of other property left by his father. The ſubject has been further diſcuſſed already.

On failure of perſons holding aſſets, he who has the care of the wife muſt pay the debt, under the rule of VISHNU (CCXX) and text of YÁJNYAWALCYA (CLXXI). NÁREDA declares it with a particular explanation.

CCXXI.

NÁREDA:—He who poſſeſſes the laſt of diſloyal wives, or the firſt of twice married women, muſt pay the debt contracted by her huſband.

The ſenſe is this: of four ſorts of women wilfully libidinous, or diſloyal, her who is laſt or fourth in the enumeration; and of

of three twice married women, her who is firſt deſcribed: he who takes *either of* theſe two women ſhall pay the debt contracted by the huſband, and not the debt contracted by the huſband of any other woman. CHANDÉSWARA.

Conſequently, he who takes a twice married woman of the ſecond or third deſcription, or a diſloyal wife of the firſt, ſecond, or third deſcription, ſhall not pay the debt contracted by her huſband. The *ſame* legiſlator propounds the diſtinctions of twice married women and diſloyal wives (Book IV, v. 158.)

If a man wed a girl whoſe marriage has been already celebrated but not conſummated, he muſt pay the debt of her firſt huſband, becauſe he has taken in marriage a girl already eſpouſed by another.

That girl who is tacitly or expreſsly contracted to one man by her parents, conſidering the laws of the diſtrict, or reflecting, "the laws of our country are not violated by giving the damſel to that man, though ugly;" ("laws" are in the plural number with a comprehenſive ſenſe, including the laws of families and laws in general;) if ſuch a girl contract an affection for another man, handſome or rich, *and wilfully accede to him*, ſhe is conſidered as the ſecond twice married woman. The text (Book IV, V. clviii 3) is alſo read *utpannasáhesà* inſtead of *utpannáſahesá*; this reading the author of the *Mitácſhará* explains, "becoming diſloyal."

If the ſame kinſmen, tacitly or expreſsly affiancing a damſel to one man, but deluded by beauty or the like, give her in marriage to another, ſhe is conſidered as the third twice married woman. The diſtinction between the ſecond and third ariſes from this difference, *that in one inſtance the ſecond marriage is* the act of her kinſmen, and *in the other it is* not the act of her kinſmen. In theſe caſes, ſince the firſt huſband had not *actually* received the damſel, the debt contracted by the firſt huſband ſhall not be paid by her ſecond lord. By "parents" and "kinſmen" muſt be here underſtood her father, paternal grandfather, or other perſons, who have a right to diſpoſe of her in marriage.

Whether ſhe have borne children, or be childleſs, (intimating generally one whoſe marriage has been conſummated,) a woman who clings to another man during her huſband's life,

through

through luſt, (or avarice, or any irregular appetite,) is the firſt diſloyal wife.

Her huſband being living, ſhe, who deſerts him, and gives herſelf to another man, ſaying " I am thine," but afterwards returns to her firſt huſband, again ſaying " I am thine," is the ſecond. She is diſtinguiſhed from the fourth, becauſe, in reſpect even of her wedded huſband, ſhe is a woman previouſly enjoyed by another.

After the death of her huſband, a woman, living in his family, whether unguarded or guarded, who receives the careſſes of another, through carnal deſire, is the third diſloyal wife. In fact, ſhe is ſimilar to the firſt, but diſtinguiſhed by the circumſtance of her huſband's deceaſe, whereas the huſband of the firſt was living. " Leaves his brother or other kinſmen" (Book IV, V. clviii 7); that implies, that ſhe ſo acted, though oppoſed by her huſband's brother and the reſt: it denotes her ſinning in ſecret.

Or the phraſe, " leaves his brother or other kinſmen," may intend the caſe of troth verbally plighted; and the term " brother or kinſman" may comprehend every *ſapinda* of equal claſs. Thus, if the affianced huſband of a girl, who was tacitly or verbally given in marriage, die, and ſhe receive the embraces of a ſtranger, or a perſon not related within the degree of a *ſapinda*, ſhe is conſidered as the third diſloyal wife; not as a twice married woman. This may be underſtood from the ambiguous terms of the text. But if ſhe receive the embraces of a man of equal claſs on failure of *ſapindas*, ſhe is a twice married woman of the ſecond deſcription. For in the definition of the third twice married woman (Book IV, V. clviii 4) the terms "*ſapinda* of equal claſs" occur. Thus ſome expound the texts.

On this we remark, that, after the death of her huſband, if a woman, previouſly authorized by him, receive the embraces of his brother for the ſake of male offspring, there is no offence: hence it is ſpecified, " through carnal deſire," and, " who leaves his brother or kinſman." If ſhe paſs by his brother or kinſman, and receive the embraces of another man of equal claſs, in conformity to the directions of her huſband, there is no offence: therefore does the Sage ſpecify, " through carnal deſire." But if ſhe receive the careſſes of her huſband's brother or kinſman,

being

being impelled by luſt or the like, *and not ſolely guided by the duty of raiſing up offspring*, ſtill there is no offence : this is alſo intimated by the text, " who leaves his brother or kinſman." Such a practice actually ſubſiſts among ſome people in particular diſtricts. Yet, in fact, the procreation of a ſon on the wife of a kinſman is forbidden in the *Cali*-age.

[" The procreation of a ſon by the brother of a *deceaſed* huſband muſt in the *Cali*-age be avoided."] *

In this text alſo, " carnal deſire " is an inſtance denoting likewiſe avarice and other irregular appetites.

" She who having received *injunctions* " (Book IV, V. clviii 8); who has been told by her kinſmen, receive the embraces of ſuch a man ; if ſhe take as a huſband any other man than him whom her kinſmen aſſigned, is the fourth diſloyal wife : and ſo is one purchaſed for money, or impelled by hunger or thirſt. Conſequently, the ſeveral phraſes, " having received injunctions " &c. may be taken either conjointly or ſeparately. This ſenſe is denoted : a woman, having loſt her huſband, but deſirous of wedlock, gives herſelf to ſome man ; ſhe is the fourth diſloyal wife : and if a woman, whoſe huſband is living, deſert him, and cling to another, but do not return to her *firſt* huſband, ſhe alſo may be conſidered as a diſloyal wife of the fourth deſcription. This text not ſpecifying, " after her huſband's deceaſe," and the preceding text expreſſing (Book IV, V. clviii 6) " but returns to the houſe of her lord," there is no confuſion.

Since he enjoys with a previous title this woman, who is another's wife, he muſt pay the debts contracted by her huſband : and this muſt be conſidered as excluſive of an unmarried harlot.

CCXXII.

CÁTYÁYANA :—A debt which has been contracted

by

* The text here partially quoted is no where cited at large. Similar texts are cited in the fifth book. See likewiſe Book IV, v. 157, and a general note to the tranſlation of MENU (v. 3).

by indigent and childlefs vintners and the reft, muft be paid by him who has the care of their wives.

Under the term " and the reft " are comprehended *all* perfons whofe livelihood depends on their wives. MISRA.

" Wives " being here mentioned in the plural number, difloyal wives of every defcription are fuggefted. Confequently he who poffeffes the wife of a deceafed vintner or the like, affimilated to property, becaufe fhe is able to fupport the family, muft pay the debt of her hufband. This is ordained by the text, and fhould not be controverted. Accordingly the following text of NÁREDA has a fuitable import; otherwife it would be a needlefs repetition of the preceding text (CCXXI).

CCXXIII.

NÁREDA:—He who approaches the widow of an indigent man leaving no male iffue, muft pay the debt of her hufband; fhe is confidered as his property.

And this feems to have been the opinion of CHANDÉSWARA. Accordingly he fays, 'this text of NÁREDA alfo has the fame import with the text of CÁTYÁYANA' (CCXXII). That again is a proper conftruction; for in the texts of CÁTYÁYANA (CLXXIII 2), of NÁREDA (CLXXII), and of VRĬHASPATI (CLXXIV), the expreffion, " he who takes the widow " *(ftrihárì)*, exhibits the verb *hrĭ* in the fenfe of poffeffion; and in the text of YÁJNYAWALCYA (CLXXI), and rule of VISHNU (CCXX), the fimilar expreffion *(ftrígráhì)* exhibits the verb *grah* in the fenfe of caption or occupancy: but here (CCXXII and CCXXIII) the verbs *bhuj* and *in*, preceded by the infeparable particle *upa*, (in the words *upa bhóctà* and *upaiti*,) fignify enjoyment and approach. The preceding text of NÁREDA (CCXXI) does not propound the obligation on him who takes the widow to pay the debt of her hufband; but the obligation on him to pay the

the debt on failure of heirs and ſons, having been already ſtated (CLXXII), it propounds a ſpecial rule. There is conſequently no objection to take the radical *aś* (of the word *ſamaśnuté)* in the ſenſe of enjoyment or poſſeſſion (CCXXI). Accordingly NÁREDA adds, "ſhe is conſidered as his property" (CCXXIII); he benefits by the wife of the deceaſed, through the wealth brought with her. Or the relative, uſed adverbially in that phraſe, denotes the woman. But he who enjoys the widow is only liable on failure of a guardian of the widow, and on failure of ſons and grandſons not competent *to the management of affairs*. However, it is held, in the *Retnácara* and other works, that this rule of deciſion concerns only thoſe women on whoſe labour their huſbands depend chiefly for their livelihood. The ſame opinion is almoſt expreſsly delivered by the author of the *Mitácſhará*. In the laſt caſe and in this, the difference between him who takes the widow, *or becomes her guardian*, and him who enjoys the widow, *or becomes her paramour*, is evidently the ſame as between a man who has the care of another's land, and one who has the enjoyment of it.

But ſome hold, that one text (CCXXIII) propounds generally the payment of debts by him who takes the widow; the other text (CCXXI) ordains ſpecially the payment of debts by him who takes the widow *under particular circumſtances:* there is conſequently no *vain* repetition. CÁTYÁYANA directs payment by him who has taken the widow, if there be a ſon living, but incompetent *to the conduct of affairs* (CLXXIV 2); in another text (CCXXII) he directs that the debt of one who had no male iſſue, or whoſe ſon is deceaſed, ſhall be paid by him who has the care of the widow: there is conſequently no *vain* repetition. It follows, that he who enjoys a diſloyal wife of another deſcription, need not pay her huſband's debt.

That is liable to objection; for the preceding text of NÁREDA (CLXXII) would contain a needleſs repetition of the text laſt cited (CCXXIII). That point ſhould be examined. This deſcription of women is greatly blamed by legiſlators. That the wives of *Bráhmanas*, and other virtuous women, do not ſo act, may be learnt in the diſcuſſion of the Duties of Man and Wife.

When a ſon competent *to the management of affairs* is living, and there is alſo a guardian of the widow, the debt muſt *in ge-*

 neral

neral be paid by the fon alone, as has been already mentioned. From this rule CÁTYÁYANA propounds a particular exception.

CCXXIV.

CÁTYÁYANA:—Should a widow, who has feveral property, take the protection of another man without the affent of her fon, her property may be feized by that fon, if there be no daughters;

2. He may feize it to difcharge debts, but never for his own gratification, fince he cannot compel his parents to pay any thing for an improper caufe.

3. Of that woman who has male iffue, but deferts her fon though opulent, MENU declares that her fon may take the peculiar property, and difcharge therewith his father's debts.

"Without the affent of her fon;" or againft his confent. "Who has feveral property;" who has confiderable female property. "If there be no daughters;" on failure of daughters.

The *Retnácara*.

The meaning is this: if a woman, poffeffing feveral property, take the protection of another man againft the confent of her fon, that fon may feize her property, but he can only do fo when he is unable to difcharge debts out of his own property, and not for his own gratification, fince he cannot compel his parents to pay any thing for an improper caufe; that is, he cannot poffefs himfelf of the property of his father, or of his mother, for the accomplifhment of an unfit purpofe. Here the difcharge of debts is merely an inftance of indifpenfable duties. The debts may be his own or his father's. But he can only do fo if there be no daughter; for, fhould there be daughters, they are entitled to their mother's feveral property: and this fuppofes female property, fuch as prefents given at the bridal proceffion, and on other occafions: the diftinctions *of fuch property* will be noticed in the chapter on the Property of Women, under the title of Inheritance.

heritance. It may be here noticed, that her recourfe to another man muft be confidered as equivalent to the natural deceafe of the mother. But, at the option of the fon, her title to feveral property may depart or fubfift, under the authority of the text (Book V, V. ccccv 1 and 2).

If a woman, deferting her fon, though capable *of protecting her*, take her feveral property, and recur to another man without the confent of her fon, that fon, feizing even her feveral property, may difcharge debts therewith: fuch is the fenfe of the third verfe (CCXXIV 3).

By the expreffion "though opulent" it is fhown, that if fhe defert an indigent fon, affuredly that fon may feize her feveral property. The *Retnácara.*

"Who has male iffue" defcribes the woman. From the particle in the phrafe "feizing even her feveral property," it follows, that if any part of his patrimony have been taken, affuredly he may feize that. The debt *to be paid* fhould be the debt of his father; for the text fpecifies "his father's debts." *The commentator fays,* "affuredly that fon may feize her feveral property;" here "for the payment of debts" fhould be fubjoined: and this is evident from the text. The term *tranflated* "opulent," but literally fignifying "capable," here imports poffeffing wealth; "incapable" fignifies moneylefs. The difference is this: if fhe deferted an opulent fon, he can only feize her feveral property for the difcharge of his father's debts; but if fhe abandon an indigent fon, he may feize it for payment even of his own debts. But, if the woman have no feveral property, the fon alone muft difcharge the debt. This NÁREDA declares.

CCXXV.

NÁREDA:—But *if* a woman who has male iffue, *but no feveral property*, defert her fon, and recur to another man, her fon alone muft pay the whole debt of her *deceafed* lord.

If fhe defert an opulent *or capable* fon, and take the protection of

of another man, without *carrying* any former property, her ſon alone muſt pay the debt contracted by her *deceaſed* lord.

The *Retnácara.*

Conſequently the conſtruction is, her ſon is liable for, and muſt pay, the debt of her lord; and that, provided the ſon be competent *to the conduct of affairs;* elſe he who takes the widow would be liable for the payment of debts: hence the commentator adds "capable *or opulent.*" It has been declared (CLXXII), that a ſon not competent *to the management of affairs* muſt diſcharge the debt on failure of a guardian of the widow; by this text it is declared, that a ſon competent *to conduct affairs* muſt diſcharge the debt, although a man have taken the widow: conſequently there is no vain repetition. The debtor being dead, his ſon competent *to manage affairs* muſt pay the father's debt out of the ſeveral property of his adulterous mother, or out of his own property, whichever may be practicable: this is ſhown by what has preceded.

CCXXVI.

Náreda:—But if a woman take the protection of another man, carrying her riches and her offspring, he muſt pay the debt of her huſband, or abandon ſuch a woman.

"Carrying her riches;" poſſeſſing conſiderable wealth. "Her huſband;" her wedded lord. Or, to avoid the payment of the debt, he muſt abandon ſuch a woman, who brings her offspring and her wealth. The *Retnácara.*

CCXXVII.

Cátyáyana:—If a woman, having an infant ſon and much wealth, ſeek another protector, he whoſe protection is taken muſt pay the debt *of her huſband:* this law is declared in reſpect of women who have infant ſons.

Here

Here the term employed *(bhartri)* ſignifies one who maintains her, *not one who marries her.* "Seek," or recur to 'for ſupport:' the text ſhould be ſo ſupplied. Conſequently the guardian to whom the mother of an infant ſon, but poſſeſſing much wealth, recurs for the ſupport of her ſon and herſelf, muſt, if he accept the truſt, pay the debt of her huſband out of her property; or, paying it out of his own property, he ſhall afterwards obtain reimburſement. Such is the ſenſe of the text: and he muſt alſo maintain both the mother and ſon. There is no vain repetition of the preceding text (CLXXIII). And in this caſe, the guardian does not take the aſſets; for the woman alone has the care of the goods. Thus we explain the law.

When the debtor is living, but is mad, has been long abſent in a foreign country, is an idiot or the like; in a word, is incapable of diſcharging debts: in that caſe, his debt ſhall be paid by his ſon alone, as has been already mentioned. But if he have no offspring, what ſhould be ruled? On this point the ſame legiſlator propounds a law;

CCXXVIII.

Cátyáyana:—The debts of men long abſent in a foreign country, of idiots, madmen, and the like, who have no male kindred, and of religious anchorets, muſt be paid, even during their lives, *but without intereſt*, by ſuch as have the care of the *debtor's* wife and goods.

By ſuch as have taken the wife and the goods appertaining to a man long abſent in a foreign country, and ſo forth: and this muſt be underſtood, according to circumſtances, as intending alſo outcaſts and the like.

Many Sages have declared generally, that the debt muſt be diſcharged by him who takes the wife of the debtor; a ſpecial rule is here propounded. A man has two wives; one, taking her offſpring and her wealth, gives herſelf to another man, ſaying "I am thine;" and the other, who poſſeſſes no wealth, takes the pro-

tection of a guardian; what is the rule of decision in this case? It is answered, since he who takes the wife with effects in fact holds assets, the debt must be discharged by him; but if both be in the same situation, it must be paid in equal proportions by both. This is the import of the former text (CCXXVI). But if the receipt of effects were previously unknown, and the creditor exacted immediate payment from him who had the care of his debtor's wife, after which the receipt of effects is discovered, then indeed the payment made by the guardian of the wife is not legal, because it was exacted from a person not justly liable: he may therefore recover his money from the creditor, and the creditor shall obtain his due from him alone who holds assets: the holder of assets may be compelled to reimburse the guardian of the wife. Such is the proper mode of adjustment in forensick practice.

A case may be here stated. A certain dishonest surety for payment asked a loan of a money-lender, in the name of a certain borrower; and the lender, fixing stipulated interest at the rate of two *pańas*, sent the loan to the borrower through the hands of the surety. Bringing the sum borrowed, the surety told the borrower, "he will not lend the money without stipulated interest at the rate of four *pańas*." Urged by distress, the borrower agreed to that interest, and accepted the loan. At the time of payment, the debtor delivered to the surety the sum due on a computation of interest at the rate of four *pańas;* but the surety paid the creditor at the rate of two *pańas*. After a few days the whole circumstances were discovered. The creditor therefore demands the greater interest from the surety; the debtor also claims the excess from the surety; and the surety refuses to pay it to either of them. What should be the rule of decision in this case? The answer is, the creditor can have no right to receive greater interest than such as he stipulated when he made the loan; the surety is not entitled to obtain interest on another's money; it is therefore reasonable that the debtor should recover the sum erroneously paid.

It should not be asked objectively, why should not the debtor pay the interest stipulated by him, for the sake of preserving uprightness *in his dealings?* Deceived by the surety's words, the debtor made the promise before the surety, not before the creditor. That promise only, which was made by the surety, as his representative, in the presence of the creditor, is efficient; not the promise

originating

originating in error caufed by the furety's fallacy. Again; the creditor may have accepted lefs intereft through tendernefs excited by the appearance of diftrefs in the debtor; in that cafe, the remainder fhall benefit the debtor alone, for it was in a manner relinquifhed to him. Yet, if the debtor voluntarily pay it, the other fhall receive it by his voluntary act. But, when an intermediate perfon himfelf borrows money, and lends it to the *ultimate* debtor, he is not a furety, but debtor to one and creditor of another: in fuch a cafe, therefore, he is entitled to the intereft at the rate of four *púnas*.

If a debtor had no fon born to him, and leave no widow, nor affets, by whom fhall his debt be paid? By no one. But if the debtor gave a pledge on contracting the debt, and his great grandfon be living, the debt fhould be paid by that great grandfon.

CCXXIX.

Yájnyawalcya:—A debt, fecured merely by a written contract, fhall be difcharged, *from a moral and religious obligation,* only by three perfons, *the debtor, his fon, and his fon's fon;* but a pledge fhall be enjoyed until actual payment of the debt *by any heir in any degree**.

But if the great grandfon do not wifh to redeem the pledge, thofe who would be entitled to inherit on failure of great grandfons, may, in the order of fucceffion, pay the debt and take the mortgaged property. If no one choofe to redeem it, the pledgee may continue to enjoy it after acquainting the king; the fum cannot be forcibly exacted from the great grandfon or remoter heir, becaufe, not having yet taken the affets, he is not liable for the debt.

This doubt here occurs; if the debtor contracted the debt, giving a pledge for cuftody only, and he, his fon, and his fon's fon die, but a great grandfon furvive; in that cafe the debt need not be paid by the great grandfon; for he does not enjoy the mortgaged

* Already cited at V. xxxviii, 2, and partially at V. cxi.

mortgaged property, and the pledgee is permitted to enjoy property pledged ſo long as the debt ſhall remain unpaid (CCXXIX): but the great grandſon alone can take the pledge, becauſe it is the chattel of his great grandfather. The apparent difficulty may be thus reconciled: "but property pledged ſhall be enjoyed" is an expreſſion merely illuſtrative of a general ſenſe; in the caſe ſuppoſed, the payment of the debt is alone requiſite. Or the word pledge may there ſignify a pledge given in lieu of intereſt, as well as a pledge not to be uſed; and *the word* "enjoy" ſuggeſts occupancy as well as fruition: hence there is no difficulty. Elſe it would be inconſiſtent with reaſon, that after advancing his own property and ſafely keeping the pledge for a long time, the creditor ſhould *be obliged to* reſtore it to the great grandſon of his debtor without receiving his due. Since the great grandſon or remoter heir holds aſſets when he has received the pledge, he is bound to pay the debt.

CCXXX.

VRĬHASPATI:—He who, having received a ſum lent or the like, does not repay it to the owner, will be born *hereafter* in his creditor's houſe, a ſlave, a ſervant, a woman, or a quadruped

The term here employed ſignifies a loan. "Or the like" comprehends depoſits and ſo forth. The *Retnácara.*

"To the owner;" to the former maſter of the ſum, that is, to the creditor and ſo forth. Therefore a debt muſt neceſſarily be paid by a ſon or other deſcendant, leſt his father or anceſtor become a ſlave, otherwiſe hell awaits him; becauſe he has not followed the conduct preſcribed. Thus may the law be conciſely ſtated.

When the creditor is dead, or has become a religious anchoret or the like, the debtor ſhould pay the ſum to his ſon or other heir; on failure of the neareſt, to the remoter heir ſucceſſively down to the learned prieſt. But if there be no heir, nor any learned prieſt in that country, or if he refuſe the payment tendered, NÁREDA propounds the rule to be obſerved in that caſe.

CCXXXI.

NÁREDA:—If a creditor of the prieſtly claſs die, leaving iſſue, *the king ſhall* cauſe the debt to be paid *to them;* if he leave no iſſue, to his near kinſman; if he leave none who are near, to thoſe who are diſtant, *paternal or maternal:*

2. If he leave no heirs near or diſtant, *nor perſons connected by ſacred ſtudies,* the king ſhall beſtow it on worthy prieſts; but if none ſuch are preſent, let him caſt it into the waters: *the debts of other claſſes, in ſimilar circumſtances, he may ſeize for himſelf.*

What is due to a prieſt, whether it be a gratuity or ſimilar *claim*, or the like, muſt, on failure of him, be paid to his ſon, or other deſcendant in the regular order of ſucceſſion. That is intimated by the phraſe "leaving iſſue." On failure of iſſue, to his near kinſmen; on failure of them, to diſtant kinſmen, allied to himſelf, to his father, or to his mother: this will be explained under the title of Inheritance. On failure of theſe, it ſhould be given to learned prieſts; or on failure of them, "let him caſt it into the waters." What is due to men of the military and other claſſes, the debtor ſhould, by parity of reaſoning, pay to the heirs in regular ſucceſſion, delivering it, on failure of nearer heirs, to the next remoter heir down to diſtant kinſmen: but on failure of theſe, it muſt be paid to the king, under the rule of VISHNU concerning hereditable property, "the wealth of all but prieſts *who die without heirs*, goes to the king (Book V, V. 417)." But the property of prieſts may on no account be taken by the king. In this MISRA, BHAVADÉVA, and others concur; and BAUDHAYANA, quoted in the *Retnácara* under the title of Inheritance, *forbids the ſacrilege.* That text (Book V, v. 444) is expounded, "the property of *Bráhmanas* is the moſt exalted poiſon *to him who ſeizes it.*" From the word "never" it appears, that the property of *Bráhmanas* muſt not even be received in the

form

form of a tax. Accordingly, in his glofs on the inftitutes of PARÁŚARA, MÁDHAVA cites the following texts of MENU.

CCXXXII.

MENU:—A king, even though dying *with want*, muft not receive any tax from a *Bráhmana* learned in the *Védas*.

MENU:—The king, having afcertained his knowledge of fcripture and good morals, muft allot him a fuitable maintenance, and protect him on all fides, as a father protects his own fon.

The king muft allot him (that is, the prieft) a fuitable maintenance, or the means of fubfiftence; and protect him on all fides, from robbers, rogues, and the like. However, the direction in the text of NÁREDA, "he fhall beftow it on worthy priefts, or caft it into the waters," is a law refpecting the payment of debts.

CHAP.

CHAP. VI.

ON

REDRESS FOR NON-PAYMENT.

THIS, according to the author of the *Mitácshará*, may be also considered as the rule for receipt of debts by the creditor.

MENU:—What has been practised by learned and virtuous men of twice-born tribes, if it be not inconsistent with the legal customs of provinces or districts, of classes or families, *let the king* establish *.

"Learned;" well read: AMERA interprets it, wise or intelligent. "Virtuous;" endued with honesty; not deceivers. "Twice-born;" *Bráhmanas*, *Cshatriyas*, and *Vaisyas:* what has been practised by such men; if it be not inconsistent with the legal customs of that country, of families and classes, *let the king* establish or confirm the practice, adopting it as unseen or unrecorded law. The text must be so supplied.

CULLÚCABHATTA.

In that gloss the meaning of the expression "confirm the practice" is, that he should decide, according to that practice, a doubtful case, for which no seen or recorded law provides.

* Already cited at V. 50.

CCXXXIII.

MENU :—When a creditor ſues before him for the recovery of his right from a debtor, let him cauſe the debtor to pay what the creditor ſhall prove due.

" For the recovery of his right from a debtor ;" to obtain the ſum lent. The king, on application from the owner of the ſum *for the recovery of it*, ſhall compel the debtor to pay to the creditor what he ſhall prove due by written or oral evidence or the like.

CULLÚCABHATTA.

On application from the creditor for the recovery of what is due by the debtor, the king ſhall, by various means, compel the debtor to pay the creditor's right, or the ſum which he proves by evidence to be due from the debtor. CHANDÉSWARA.

In what mode payment ſhould be enforced, MENU declares.

CCXXXIV.

MENU :—By whatever lawful means a creditor may have gotten poſſeſſion of his own property, let the king ratify ſuch payment by the debtor, though obtained even by compulſory means.

" By compulſory means ;" by ſeizure or diſtreſs.

CHANDÉSWARA and CULLÚCABHATTA.

The debtor, or his aſſets, may be the ſubject to which that expreſſion refers. The ſame lawgiver declares the ſeveral means by which payment may be enforced.

CCXXXV.

MENU :—By the mode conſonant to moral duty, *or by the mediation of friends*, by ſuit in court, by

 artful

artful management, or by diſtreſs, a creditor may recover the property lent; and, fifthly, by legal force.

He may recover it by the method laſt mentioned, if payment cannot be obtained by the ſeveral methods firſt mentioned.

MISRA.

Another mode will be ſubſequently mentioned. VRĬHASPATI explains the mode conſonant to moral duty.

CCXXXVI.

VRĬHASPATI:—By the interpoſition of friends and kinſmen, by mild remonſtrances, by importunate following, or by ſtaying conſtantly at the houſe of the debtor he may be compelled to pay the debt: this mode of recovery is called a mode conſonant to moral duty.

By the perſuaſive diſcourſe of thoſe who are friends and intimates of the debtor, or his kinſmen, ſuch as maternal uncles and the reſt; by mild remonſtrances or honied language of the creditor himſelf; by importunate following or purſuit; by ſtaying conſtantly at the houſe of the debtor, or by abiding near him, that is, by the creditor's faſting and the like at the houſe of the debtor; by all theſe methods the debtor may be compelled to pay the debt to the creditor: this mode of recovery, by the interpoſition of friends and the like, is called a mode conſonant to moral duty. This is merely an inſtance; it comprehends the interpoſition of honeſt ſtrangers with diſcourſe exciting a ſenſe of ſhame, and ſo forth.

CÁTYÁYANA explains the mode of recovery by ſuit in court.

CCXXXVII.

CÁTYÁYANA:—A debtor, being arreſted, *and freely*

 acknowledging

acknowledging the debt, may be openly dragged before the publick aſſembly, and confined until he pay what is due, according to the immemorial uſage of the country.

The reſtraint of the debtor by the creditor before the publick aſſembly, until he pay the ſum due, is the mode of recovery by forenſick proceeding. The *Retnácara.*

He may be detained and confined; he may be ſtopped and prevented from going where he liſts, and ſo confined. " Before the publick aſſembly;" otherwiſe he might allege, that he was exceſſively beaten, and ſo forth. " According to the immemorial uſage of the country;" according to the uſage which ſubſiſts in that particular country. For example; in ſome countries creditors cauſe their debtors to be arreſted and confined by the king's officer; in others, they themſelves, or their ſervants, reſtrain the debtors; in others again, they confine them in fetters.

Or a diſtinct method of recovering debts is called the mode of recovery conſiſtent with the immemorial uſage of the country; or it falls under the deſcription of violent compulſion, and will be hereafter mentioned: " they muſt be made to pay their debts according to the cuſtom of the country " (CXLII). It is limited by the reſtriction of the immemorial uſage of the country. According to this opinion, the mode of recovery by ſuit in court, or practice, muſt be otherwiſe explained. Thus the *Médhátit'hi* has this remark; ' from a debtor, who is indigent, payment muſt be obtained by a practical mode; and that practice conſiſts in perſonal labour, and the like. For inſtance; a creditor lending a further ſum to an indigent debtor, may employ him in his regular occupation, ſuch as huſbandry or the like: the produce thereby obtained ſhould be delivered to the creditor.'

This, according to the preceding opinion, is a mode of recovery ſimilar to that of ſuit in court deſcribed by CÁTYÁYANA; it falls under the ſame deſcription, for the text of CÁTYÁYANA is merely illuſtrative. In fact, a debtor, being reſtrained, or being detained for work, otherwiſe than in the cuſtody of the king's officer and the like, may be employed in his regular occupation, ſuch as agriculture and the like: and in that caſe, the creditor may not employ a *Bráhmana* in menial ſervice, nor a

Vaiſya

Vaiſya in military duty; in ſome countries he may employ a *Brâhmana* in agriculture or commerce, but he may not employ a barber of a mixed claſs in carrying burdens. To indicate this and other circumſtances, the legiſlator adds, "according to the immemorial uſage of the country." That intends alſo the cuſtoms of families, and the uſage eſtabliſhed by law, and the like. Conſequently, the meaning is, a creditor may not employ his debtor in work inconſiſtent with uſage. Again; in that country where men of certain claſſes do not carry in a litter men of certain other claſſes, the creditor may not employ one of ſuch a claſs in carrying the litter of a man of ſuch other claſs.

By the phraſe "before a *publick* aſſembly" it is intimated, that the perſons aſſembled ſhould interpoſe to prevent ſuch irregular employment. The poſſible accuſation of maltreatment is thereby obviated, as before. Or the expreſſion "before a publick aſſembly" is intended to ſuggeſt the approbation to be obtained from impartial perſons, in this form, "this work, which is not inconſiſtent with local uſage, the debtor muſt perform;" it obviates the poſſible accuſation of infringing the cuſtom. This and other points may be deduced from reaſoning.

"Until he pay what is due;" conſequently, if the debt were diſcharged, the creditor muſt omit the reſtraint and other meaſures. This is mentioned *incidentally*, wandering from the real ſubject.

Vrĭhaspati explains artful management:

CCXXXVIII.

Vrĭhaspati:—When a creditor, with an artful deſign, borrows any thing of his debtor, or withholds a thing depoſited by him or the like, and thus compels payment of the debt, this is *called* legal deceit.

"With an artful deſign;" by ſtratagem. For inſtance; the creditor borrows effects of the debtor on ſuch pretences as the following, and thus compels payment of the debt: "a gueſt of high rank is come to my houſe, lend me a metallick caldron for his

 ſervice;"

ſervice;" or on this pretence, "a kinſman of the bride is come to viſit the bridegroom, lend me ſilk clothes, ornaments, and the like, to array the bridegroom."

"Withholds a thing depoſited by him;" or any thing ſubſequently intruſted. For inſtance; a creditor, who had formerly lent ten *cárſhápanas*, but cannot recover the ſum, reſolves on uſing artifice, and the debtor is deſirous of borrowing a further ſum; the creditor tells him, "I will further lend you fifty *panas* of copper, and you ſhall pay the whole at once, but you muſt give a pledge." The debtor, ſo addreſſed, delivers a pledge of greater value; and the creditor, giving a ſmall part of the ſum, tells him, "I will give the whole ſum the day after to-morrow." On that day he delivers the ſum diminiſhed by the amount of his former debt, or attaches a ſufficient part of the pledge. In ſuch a caſe he withholds a thing ſubſequently intruſted. The term "and the like" comprehends depoſits and the reſt. In ſuch a caſe, there is not the abſolute ſin of wronging one who has repoſed confidence in him, provided he do not take more than his due.

Again; a diſhoneſt debtor, delivering a pledge for cuſtody only, receives a loan, but refuſes to pay the debt at its term; the cunning creditor mentions, in various places, "his pledge, which was in my poſſeſſion, has been ſtolen by thieves." On hearing this through ſucceſſive report, the debtor tenders the principal with intereſt, and demands his pledge; and that creditor delivers the pledge, *and takes the ſum tendered*. In this caſe the fallacy muſt be conſidered as an artifice. Such a mode of recovering debts is called legal deceit. Deceit *(upadhi)* is ſynonymous with artifice.

VRIHASPATI alſo explains diſtreſs:

CCXXXIX.

VRIHASPATI:—When he forces the debtor to pay by confining his ſon, his wife, or his cattle, or by watching conſtantly at his door, this is called lawful confinement.

The method of recovery by the reſtraint of his wife, his ſon, or

or his cattle, or by watching at his door, is called lawful confinement, or diſtreſs. This is a mere illuſtration; the ultimate ſenſe is, 'cauſing him *to ſuffer* inconvenience by any mode.' However, that ſhould not be done, by which he may be expoſed to great danger. This we hold reaſonable.

The ſame legiſlator explains legal force:

CCXL.

VRĬHASPATI:—When, having tied the debtor, he carries him to his own houſe, and by beating or other means compels him to pay, this is called violent compulſion.

Binding him and carrying him to his own houſe, he may threaten to beat him and ſo forth; frightened by thoſe menaces, the debtor pays the debt: in ſuch a caſe, the threat of blows, preceded by confinement, is a mode of recovering debts which is called violent compulſion, or legal force. The carrying of him to his own houſe is not requiſite; for the threat of beating him on the road, or at ſome other place, is violent compulſion. The binding may be no more than *forcible* ſeizure; conſequently the threat of blows, after catching him by the hair, muſt be deemed violent compulſion.

Violent compulſion is a mode of recovery defined as conſiſting in blows and the like, after carrying the debtor to his own houſe.

The *Retnácara.*

According to this author, even blows are authorized. Under the term "and the like" is comprehended harſh reproof, or verbal abuſe and the like.

CCXLI.

CÁTYÁYANA:—By beating, or by coercion, a creditor may enforce payment from his debtor; or by work, by ſuit in court, or by mild remonſtrance: firſt *duly* deliberating *on the method to be followed:*

 2. Or

2. Or let him obtain the ſum due, by artifice, or diſtreſs.

In this text, "beating" ſignifies legal force, or violent compulſion: "coercion," ſtaying conſtantly at the houſe of the debtor, or importunate attendance. The term is ſo explained in the gloſs of the *Retnácara:* in effect it denotes the creditor himſelf refraining from food and the like; and that falls within the mode conſonant to moral duty, as deſcribed by VRĬHASPATI. CHANDÉSWARA explains, "work," or *proper* conduct, by an example: for inſtance, reflecting, "he is very diſhoneſt, and will not repay the loan he receives from me; I muſt recover the debt by blows and other ſuitable methods:" the creditor adopts proper meaſures. Ultimately it ſuggeſts both means, *proper conduct, and obliging the debtor to work;* this *laſt* falls under the deſcription of mild methods: it does not vary from the ſenſe of MENU's text, or "work" may bear the *literal* ſenſe of labour: it ſhall be ſubſequently diſcuſſed under the text of YÁJNYAWALCYA. But "ſuit in court," *which has been explained as a ſimilar mode,* is alſo noticed by CÁTYÁYANA. "Mild remonſtrance;" affectionate language, with praiſe and the like. "Deliberating;" determining after due deliberation.

CÁTYÁYANA next declares from what debtor payment ſhould be obtained, in what mode.

CCXLII.

CÁTYÁYANA:—By mild expoſtulation let a creditor procure payment from a king, from his maſter, and from a prieſt; but from an evil-minded man, or an heir, by ſome artful contrivance.

2. MENU ordained, that merchants, cultivators of land, and artiſts, muſt be made to pay their debts according to the cuſtom of the country; but that a creditor might enforce payment from diſhoneſt debtors by violent meaſures.

"Heir;"

"Heir;" inheritor. In ſome places the text is read, "BHRIGU ordained."

He ordained, that merchants, cultivators of land, and artiſts, muſt be made to pay their debts according to the cuſtom of the country. The *Retnácara.*

"A prieſt," or ſpiritual parent: but if any other than a prieſt happen to be ſpiritual parent *of the creditor*, he alſo is ſuggeſted by the word "prieſt" taken illuſtratively. Again; the word "prieſt" *(vipra)* may be taken in the ſimple ſenſe of venerable, for it has that import; and a perſon to whom veneration is due from the creditor is meant. Why are the "king" and "the creditor's maſter" ſeparately mentioned? The anſwer is, becauſe diſreſpect to the king, or to his own maſter, produces evil in this world; to intimate this, they have been ſeparately mentioned. It may be here remarked, that in ſome inſtances even a *'Súdra* is venerable.

YÁJNYAWALCYA:—Science, moral conduct, age, kindred and wealth, entitle men to reſpect; and moſt, that which is firſt mentioned in order: with theſe qualities, even a *'Súdra* deſerves reſpect in his old age.

With theſe qualities in an eminent degree, namely ſcience and the reſt, even a *'Súdra* is entitled to veneration, when his age paſſes ninety years. Thus MENU expreſſes, "even a *'Súdra is venerable*, if he have entered the tenth decade of his age*." The *Dípacalicá.*

Should many venerable perſons be aſſembled, reſpect muſt be firſt ſhown in ſociety to the learned man; next to him, whoſe conduct is pure; afterwards, to the aged man; next, to one who has learned kinſmen and the like; and laſtly, to the wealthy man. And this concerns prieſts: valour and the like chiefly entitle a ſoldier to reſpect; and riches, a merchant. But here, ſhould many learned men be aſſembled, the precedence muſt be regulated by the pre-eminence of their reſpective ſciences; for the *Srí Bhágavata* records, "That indeed is ſcience, by which the knowledge

* Chap. II, V. cxxxvii.

knowledge of God is advanced." Science, confifting in knowledge, which advances *diligent* obfequioufnefs, entitles a 'Súdra to refpect; or fkill in arts, the fcience of medicine, or the military art. *From him payment muft be procured* by mild remonftrance, tender expoftulation, or the interpofition of friends and kinfmen. Surely, from a foldier and the reft, *payment muft be procured by this mode.* "An evil-minded man;" one who is difhoneft, but not unentitled to refpect. It is the fame in regard to foldiers and the reft, who cannot be treated with difrefpect. It is alfo the fame in regard to kindred, pupils, and the like.

"And artifts" (CCXLII 2); the particle fuggefts the comprehenfion of *Vaifyas* and the reft. "Difhoneft debtors;" averfe from the difcharge of their debts, not afraid of acting immorally, ignorant and fo forth, but not entitled to refpect; in a word, *'Súdras* and the reft. Diftrefs muft be employed when violent meafures cannot be adopted. The term ufed in the text fignifies violent meafures.

In defining the mode of recovering debts by fuit in court (CCXXXVII), it is faid "arrefted, dragged *and confined.*" How can that be? For, fhould the ejection of urine and feces, and other corporeal neceffities, be prevented, life could not be preferved. For this, Cátyáyana delivers a precept:

CCXLIII.

Cátyáyana:—When a prifoner has need of ejecting urine or feces, he fhould either be followed *at a diftance,* or difmiffed in fetters:

2. Should he have given a furety, he muft be releafed each day, at the hour of meals; and at night, if a furety have been given to fuch effect:
3. But, if he do not tender a furety for appearance, nor avail himfelf of fuch a furety, he muft be confined in jail, or delivered to the cuftody of keepers.
4. A venerable, truft-worthy and virtuous man fhall not be confined in jail; unreftrained, he muft be releafed,

releafed, or *be difmiffed* under the obligation of an oath.

"When he has need, &c." when he intimates fuch occafion, he muft be followed, *or watched*, at a diftance from the place where urine and feces are ejected. "Or difmiffed in fetters;" bound by chains and the like. Two disjunctive particles, here employed, are intended to fhow diftinct rules governed by the nature or amount of the debt, and by the character of the debtor.

What fhould be done at the hour of meals? The legiflator adds, "fhould he have given a furety," fhould a furety have been given, or a fponfor affigned, he muft be releafed each day, at that hour of meals for which the furety became anfwerable. Confequently, after taking a furety for the hour of meals, he fhould be daily releafed. In the *Retnácara* the terms are expounded, a prifoner from whom a furety is taken. From the expreffion "each day," it appears that a furety fhould be taken each day, that is at the hour of fun-rife. Still, however, the terms "and at night," authorize the releafe of a debtor at night alfo, when a furety has been previoufly taken: and the word "day" may fignify a day and night. A fynonymous term, bearing a general fenfe, occurs in the text concerning hair-intereft (XXXV 4). *Yet* the acceptation may follow the texts of Sages concerning attendance on cattle; for inftance, the text cited in the *Práyaśchitta tatwa**.

This muft be underftood, when he cannot obtain his repaft without giving a furety. "And at night;" even at night, if a furety fay, "this man fhall be produced by me, let him go home at night:" in that cafe he fhould alfo be releafed at night. But, if no man become furety for him, becaufe he is fufpected of difhonefty; or if he do not feek bail; or, having given a furety for appearance, if the debtor, being releafed, do not again apply to his furety; what fhould be done in thefe cafes? The legiflator fays, "if he do not tender a furety for appearance (if he cannot obtain a furety), or do not avail himfelf of fuch a furety" (or do not fo act as is proper after finding bail); or, having given bail, and

* Cited here at full length, but omitted in its proper place, Book III, Chap. iv. (See note to V. 9 of that chapter.)

and being liberated by the creditor, if he do not again attend his furety, that is, if he conceal himfelf from him and fo forth, (both may be underftood from the ambiguous terms of the text;) *in thefe cafes*, fhould he be at any time difcovered after laborious fearch, he fhall be confined in jail; that is, he fhall be confined at night within clofed gates and the like: but at the hour of meals he muft be followed by the creditor himfelf, or be fuffered to take his repaft bound in fetters or the like; in the fame manner he fhould be allowed to bathe, but, if poffible, he fhould take his repaft within the prifon. If there be keepers of the jail, let the creditor imprifon him there, after giving notice to the jailers. But when the creditor himfelf enforces payment of the debt, he may confine him in his own houfe.

But if the debtor be not liable to confinement in prifon, or if he be truft-worthy, the creditor fhall not confine him in a jail. This the legiflator declares (CCXLIII 4). Should fuch a venerable perfon be not truft-worthy, or, though *in general* truft-worthy, if confidence be not placed in him, he muft be difmiffed under the obligation of an oath. This and other points may be argued.

CHANDÉSWARA and the reft give a fimilar expofition; but in his glofs it is faid, 'if the debtor do not tender, or if he refufe to give, a furety for appearance or other fponfor.' The word 'other' intends a furety for payment. Confequently "furety for appearance" is confidered as merely illuftrative. The term (tranflated do not "avail himfelf") is here explained as fignifying "refufe." The disjunctive particle has a reference to the word "tender," which occurs in the text. His refufal may be in this form, "how fhould I give a furety, I am not trufted?" Such a fpeech, when he is arrefted by the creditor or the king, *is deemed a refufal*. But in fact a furety for payment can hardly be fuppofed *in the prefent cafe*. For inftance; fhould any one fay, "releafe this man, I will pay what is due by him," the creditor may reply, "the term of payment has already elapfed, difcharge it therefore immediately:" with this notion, a furety for appearance *only* is mentioned. However, fince the term *of payment* may be enlarged through the interpofition of mediators, it is poffible that a furety for payment fhould alfo be given. The opinion of CHANDÉSWARA may therefore be juftified.

The

The confinement of a truſt-worthy man is unneceſſary, becauſe he can give a ſurety.

CCXLIV.

VRĬHASPATI :—From a debtor who promiſes payment, the debt may be recovered by mild remonſtrance and the like, and by *employing him in* work, by the mode of *moral* duty, by legal deceit, by violent compulſion, and by confinement at home.

" By mild remonſtrance and the like ;" ſince the interpoſition of friends and the reſt, and the withholding of a depoſit and the like, are comprehended under the term " and the like," thoſe modes of recovering a debt which are conſonant to moral duty and ſo forth are alone exhibited : the legiſlator himſelf details thoſe very modes of recovery, by mild remonſtrance and the reſt, " by the mode of moral duty, by legal deceit, &c." " By confinement at home ;" by the mode of lawful confinement : for he himſelf denominates confinement at home, the mode of lawful confinement. " By *employing him in* work ;" by labour. On this conſideration, CHANDESWARA has not admitted the enunciation of the word " labour " in the definition of violent compulſion. By him four methods only are mentioned. Suit in court falls within the mode of violent compulſion. There is not conſequently any contradiction to MENU, who notices five modes. CÁTYÁYANA has not ſeparately mentioned diſtreſs or lawful confinement. It falls under the deſcription of compulſory means, *but* is a ſlighter compulſion, as has been already remarked.

By what means ſhall payment be obtained from him who has no aſſets ? Wanting funds, what can he pay ? Therefore does MENU propound a mode of diſcharging debts in ſuch caſes.

CCXLV.

MENU :—Even by perſonal labour ſhall the debtor pay

pay what is adjudged, if he be of the ſame claſs with the creditor, or of a lower; but a debtor of a higher claſs muſt pay it *according to his income*, by little and little.

A debtor of equal or inferior claſs to the creditor ſhould, by labour, put himſelf on a par with his creditor; the parity conſiſts in mutual exoneration from debt: conſequently the ſenſe is, he ſhould diſcharge the debt. Before the debt was diſcharged, there was this diſparity, that one was creditor, the other debtor; but the debt being diſcharged by means of labour, on a computation of the hire for work performed, that diſparity vaniſhes. Work muſt be performed by him alone, the rule of whoſe claſs, country, and family, is not thereby infringed, as has been already remarked: but if the creditor be of the commercial claſs, and the debtor of the military claſs, the lawgiver declares what ſhould be done: "but a debtor of a higher *or ſuperior* claſs muſt pay it by little and little." Here it ſhould be conſidered, that the debtor of a higher claſs ſhould be employed in labour conſiſtent with his regular occupation, at ſome other ſuitable place, not at the creditor's houſe; after aſſigning a ſufficient portion of his earnings for the maintenance of his family, the remainder ſhould be delivered to the creditor.

But if the creditor, as well as the debtor, be of the ſacerdotal claſs, may the creditor oblige that debtor to work for him, ſince he is of equal claſs? or may he not ſo employ him?

CCXLVI.

Vrĭhaspati:—If the debtor be really poor, the creditor may take him to his own houſe, and oblige him to work in diſtilling ſpirits and the like; but a prieſt muſt be made to pay gradually.

"In diſtilling ſpirits and the like;" ſince the text coincides with that of Menu, a debtor of equal or inferior claſs is intended. But the ſubſequent phraſe intimates, that a *Bráhmana*, even

even though indebted to a man of the ſame claſs, ſhall not be compelled to work; for if it ſuppoſed him indebted to a *Cſhatriya* or the reſt, the text would be nugatory. The reaſon is, that *Bráhmanas* are eminent in reſpect of each other; for their greatneſs is unlimited.

CCXLVII.

Yájnyawalcya:—He may compel a poor debtor of a low claſs to do work by way of paying his debt: but a prieſt, if indigent, muſt be made to pay gradually according to his income, *or caſual gains.*

"By way of paying his debt;" for the diſcharge of his debt. "According to his income;" according to the acquiſition of funds. The *Retnácara.*

But we expound "a low claſs," a lower claſs than the ſacerdotal tribe, namely the military claſs and the reſt. "Gradually;" employing a prieſt in his regular occupation, as ſacrificing and collecting alms; or, if that fail, in bearing arms and the like; and out of his earnings, ſupplying the maintenance of his family with frugality, the remainder ſhould be applied to the diſcharge of his debt. In proportion as a ſurplus remains, ſhould the debt be diſcharged: and this appears from the expreſſion, "a prieſt muſt be made to pay gradually." But here "a low claſs" is taken as intending alſo an equal claſs; and "prieſt," as intending a ſuperior claſs. This is likewiſe remarked in the *Mitácſhará.* The text alſo concerns a debtor of equal claſs, as well as of inferiour claſs. Cátyáyana declares it expreſsly.

CCXLVIII.

Cátyáyana:—The creditor may exact payment by labour from a debtor of the military, commercial, or ſervile claſs, if he be either equal to himſelf or lower.

By

By the enumeration of "military, commercial and servile classes," it is here intimated, that payment of a debt should be procured from a man of the priestly class by another mode: and that has been already propounded, as declared by VRĬHASPATI and YÁJNYAWALCYA. The term "servile class" intends generally any very low class, and comprehends therefore mixed classes, such as *Múrdhábhishicta* and the rest. The particulars of these classes should be delivered under the title where Tribes are considered.

He should only compel his debtor to perform work which is not reprehended, as has been already hinted: but if he oblige him to perform work which is reprehended, what should follow?

CCXLIX.

CÁTYÁYANA:—But if he compel the debtor to do any improper work, not stipulated at first, he shall be fined in the first amercement, and the debtor shall be released from his demand.

"Not stipulated at first;" not mentioned when the debt was contracted. For instance; if the debtor said, "I will pay thee this debt by any work, even the most abject, if I cannot discharge it by honourable means;" in that case such work has been stipulated: but if he simply say, "I will pay the debt," or "I will discharge it by labour;" in that case, should the creditor oblige him to perform such work, which has not been stipulated, the creditor shall pay the first amercement, that is, a fine denominated the first amercement. That fine is explained by MENU; "Now two hundred and fifty *panas* are declared to be the first amercement." This may be properly discussed under the title of Fines.

That sort of labour is reprehended, which is not authorized by the system of law. For example; the regular employment of a *Cshatriya* is the use of arms offensive and defensive; but if that fail, commerce and certain other occupations are authorized by the law: work of a different nature is reprehended. But to a *Cshatriya* who abandons not his own profession, however distressed,

treſſed, commerce and the reſt, are alſo abject occupations. Yet to him who has undertaken commerce and the like, or is willing to undertake it, ſuch an occupation is not a blameable employment. However, ſervice and low mechanical arts are abject occupations. The ſame ſhould be underſtood in regard to men of the commercial claſs and the reſt: and that is aſcertained from practice. This has been ſufficiently explained.

It ſhould be here remarked, that a *Bráhmana*, who ſubſiſts even by agriculture, is not conſidered as following a profeſſion foreign to him: the creditor may not tell him, "following the profeſſion of arms or the like, and *thereby* earning money, pay the debt." Again; daughters, ſons, and the reſt, ſhould not be ſold: *therefore*, from parity of reaſoning, no debtor whoſoever can be compelled to ſell his children, in as much as the act is immoral.

The debtor is exonerated from the debt. The *Retnácara.*

By labour alone a debt is fully diſcharged; but releaſe from the demand is again mentioned to ſhow that in this caſe the debtor is exonerated, however inconſiderable the work performed.

CCL.

NÁREDA:—Should a debtor be diſabled, by *famine or other* calamity of the time, from paying the whole debt, he ſhall be only compelled to pay it *in ſmall ſums*, from time to time, according to his ability, as he happens to gain property.

Should he be diſabled from paying the debt, through ſome calamity of the time, that is, in conſequence of famine or the like. The *Retnácara.*

Some hold, that this text concerns *Bráhmanas* and debtors ſuperior in claſs to the creditor; for it coincides with the text of MENU and the reſt. But, in fact, this text may alſo be applicable to any caſe where the creditor cannot oblige him to work, or where the debtor is incapable of labour.

It ſhould be here underſtood, that MENU (CCXXXIII) directs payment to be enforced by the king; the ſubſequent text (CCXXXIV) ſeems alſo to intend payment enforced by the king.

king. The creditor therefore applies to the king, ſaying, "this debtor does not liquidate my debt;" the king, finding that the debt is to be recovered from a man of the prieſtly claſs, adopts the mode of moral duty: calling the debtor's intimate friend or the like, he ſends him to obtain payment of the debt from that man by mild expoſtulation; or procures payment by his own mild remonſtrances; or ſuffers the creditor to beſet the houſe of the debtor, faſting there. But if the debtor be a merchant, he ſhall only be made to pay the debt according to the cuſtom of the country; the king himſelf ſhould confine him in the cuſtody of his own officers: this and other modes ſhould be underſtood. But if the debtor be very contumacious, and one whom the king cannot reduce by reaſon of his great power, he ſhould bid the creditor procure payment by withholding a depoſit or the like. The mode of violent compulſion is obvious. If that be not practiſed, he ſhould ſend the creditor to purſue the mode of lawful confinement or diſtreſs: this mode has been diſcuſſed. Suit in court, or, as explained in the *Médhâtit'hi*, practice *of labour*, ſhould be followed for the recovery of a debt from a very indigent debtor. It conſiſts in this: taking a further ſum from the creditor, let the king advance it to the debtor, who muſt labour in huſbandry, commerce, or the like, and deliver to the creditor the property thereby gained. This appears from a brief examination of the ſubject.

In theſe definitions of the modes of recovery, creditor is mentioned indeterminately; but is deſcribed as a perſon recovering his property, as one who had advanced money, as owner of the effects. It follows, that theſe methods are univerſally applicable to depoſits and the like. Accordingly, in the chapter on Redemption of Pledges, "deceit" and "confinement" are mentioned in the text of VRĬHASPATI (CII); it thence appears, that the king ſhall not compel a creditor to reſtore a pledge to the debtor, by the mode of confinement and the reſt: wherefore "debtor," in the definition of lawful confinement, muſt be underſtood to ſignify one who has received property *from another*.

If the creditor do not apply to the king, but himſelf procure payment of the debt by ſome legal mode, ſuch as that of moral duty and the reſt, ſhall he be puniſhed or not? On this ſubject MENU declares *the law*.

CCLI.

MENU :—That creditor who recovers his right from a debtor, muſt not be rebuked by the king for retaking his own property.

A creditor, purſuing modes of recovery, ſuch as that of moral duty and the reſt, in proper caſes, ſhall not be checked by the king : ſuch is the ſenſe. The *Retnácara.*

" In proper caſes ;" purſuing the mode of moral duty, if the debtor be of the prieſtly claſs and the like ; deceit, if he be an heir and ſo forth. " The creditor ſhall not be checked ;" then ſurely he ſhall not be puniſhed. But if he act contrary to law, a puniſhment ſhall be inflicted. This appears from the terms uſed in the *Retnácara ;* and that puniſhment may be harſh rebuke or other correction : this can only be diſcuſſed with propriety under the title of Puniſhment.

CULLÚCABHATTA expounds " he ſhall not be rebuked," he ſhall not be chidden by the king in theſe terms : " haſt thou dared to recover the debt from thy debtor by violent means without acquainting me ? " If there be no reproof, ſurely there ſhall be no puniſhment.

CCLII.

VISHNU :—A creditor recovering the ſum lent by any *lawful* means, detention, bondage, or the like, ſhall not be reproved by the king ; if the debtor, ſo forced to diſcharge the debt, complain to the king, he ſhall be fined in an equal ſum.

" An equal ſum ;" a ſum equal to the debt recovered. The *Retnácara.*

" Detention ;" lawful confinement and ſuit in court, as deſcribed by CÁTYÁYANA. " Bondage ;" violent means. The term " or the like," comprehends the other modes of recovery.

CCLIII.

YÁJNYAWALCYA:—He who recovers an acknowledged debt by his own act, *in any of the legal modes to which the debtor has tacitly consented,* shall not be blamed by the king; and if the debtor shall complain of such an act before the king, he shall be fined, and compelled to pay the debt.

"Acknowledged;" owned. The *Mitácshará.*

A creditor recovering an acknowledged sum, or a debt proved by witnesses or the like, shall not be blamed by the king in these terms, "why didst thou so?" If a debtor, on whom violent means and the like have been used to enforce payment, wickedly complain before the king, he shall be blamed by the king, that is, he shall be fined, and he shall be compelled to pay the debt. This exposition is approved in the *Dípacalicá.* The text already cited from VISHNU, regulates the amount of the fine; he shall therefore be amerced in a sum equal to the debt.

Is not an amercement equal to the amount of the debt inconsistent with the following text of MENU?

CCLIV.

MENU:—The debtor, who complains before the king, that his creditor has recovered the debt by his own legal act, *as before mentioned,* shall be compelled by the king to pay a quarter of the sum *as a fine,* and the creditor shall be left in possession of his own.

It appears from this text, that he shall be fined in a fourth part of the debt. On this CHANDÉSWARA remarks, that 'an amercement equal to a fourth part of the sum must be understood, when the offender is unable to pay a *larger* fine, or is *in general* virtuous.'

virtuous.' Confequently, a fine equal to the whole fum is confidered as the general rule. But CULLÚCABHATTA thus expounds the text: 'fhould a debtor complain to the king againft a creditor who recovered the debt by his own act, thinking that he has great influence over the monarch, that debtor fhall be fined in a quarter of the debt, and the fum *recovered* fhall be affigned to the creditor.' And that is reafonable; for it was proper that he fhould recover the debt by application through fome perfon near the king: in this cafe, fince the creditor may alfo be charged with a flight offence, a fmaller fine is impofed on the debtor. Again: if the debtor be *in general* virtuous, or be unable to pay a large fine, the fame confequence is reafonable; and the expofition adopted by CHANDÉSWARA may therefore be juftified.

Yet fome think, that becaufe the inftitutes of MENU prevail over all other codes, his texts fhould not be reftricted in confequence of a rule of VISHNU. The fine fpecified by MENU muft therefore be confidered as the general amercement; and according to that text, and reftricting the law propounded by VISHNU, his rule muft be applied to the cafe of a very difhoneft debtor. That is wrong; for the law, as propounded by MENU, ftill needs qualification. The rule of VISHNU, *thus expounded*, fignifies, that a very perverfe debtor, complaining before the king of his creditor's enforcing payment, fhall be fined in a fum equal to the debt; it ftill contradicts the text of MENU, for that fignifies, that a debtor, complaining before the king, fhall be fined in a quarter of the debt: to reconcile the apparent inconfiftency with the rule of Vifhnu, "not difhoneft" muft be given as an epithet to "debtor" in the text of MENU; and the law, propounded by MENU, has needed qualification. This muft be admitted by the wife.

But if the debtor be unable to pay the fum by any means whatfoever, wheel-intereft may be exacted at the choice of the creditor.

CCLV.

VRĬHASPATI:—After the time for payment has paft, and when the intereft ceafes, *on becoming equal to the principal*, the creditor may either recover his

debt,

debt, or require a new writing in the form of wheel-intereſt (*chacravrĭddhi*).

" When intereſt ceaſes," after accumulating to its limit.

The *Retnácara.*

" After the time for payment has paſt ;" this may be conſidered as relating to a loan for a ſpecified time. " When intereſt ceaſes," concerns a debt unlimited as to time. Hence it appears, that if a creditor, by violent methods or the like, exact payment of a ſum lent for a limited time before its term has expired, or of a debt for no limited time before intereſt ceaſes, he ſhall be puniſhed. But if he can recover it by mild expoſtulation, no offence ſhall be imputed to the creditor, as ſuggeſted by another text of VRĬHASPATI (CLXVI 2).

" Or require a new writing," (that is, a written contract,) in the form of wheel-intereſt. Making the doubled ſum the principal, and ſtipulating intereſt afreſh, he may require a new writing, after cancelling the former note.

CCLVI.

CÁTYÁYANA :—Twice the ſum lent ſhould always be received by the creditor, *if the debt be of long ſtanding ;* but if *the debtor do* not *pay* twice the principal when intereſt has ceaſed, the creditor may again exact *an agreement for* intereſt.

" Twice the ſum " is here mentioned on the ſuppoſition of a debt conſiſting of gold or the like ; but if clothes or other commodities were lent, four times the value, or other multiple *of it*, as declared *by the law*, muſt be underſtood. Accordingly VRĬHASPATI ſays generally, " when intereſt ceaſes."

" When intereſt has ceaſed " (CCLVI) ; when intereſt has ſtopped ; if he do not then pay : the text muſt be ſo ſupplied. In that caſe " the creditor may again exact intereſt ;" making the former debt, together with intereſt, his preſent principal, he may ſtipulate intereſt afreſh : and this is the wheel-intereſt mentioned

tioned by VRĬHASPATI. Such wheel-intereſt is of three kinds, as declared by MENU.

CCLVII.

MENU :—He who cannot pay the debt *at the fixed time,* and wiſhes to renew the contract, may renew it in writing, *with the creditor's aſſent,* if he pay *all* the intereſt then due ;

2. But if, by ſome *unavoidable accident,* he cannot pay the whole intereſt, he may inſert *as principal* in the renewed contract ſo much of the intereſt accrued as he ought to pay.

"Then due ;" the intereſt legally due to the creditor : paying the whole or a part of that, he may renew the contract or writing ; that is, tearing the former writing, he may execute a new bond. If the whole intereſt be paid, freſh intereſt on the original debt only is ſtipulated : this is one form of wheel-intereſt ; and in this caſe the expreſſion " he who cannot pay the debt " ſignifies one who is only unable to pay the principal. If a part of the intereſt be paid, intereſt may be ſtipulated afreſh on the principal of the debt, together with part of the intereſt accrued : this is another form of wheel-intereſt ; and in this caſe the expreſſion quoted, ſignifies one who is unable to pay the original debt, and a part of the intereſt. But if he do not pay " the intereſt then due," (for the phraſe is connected with the preceding terms,) that is, if he pay no part of the intereſt, he muſt renew the debt for the ſum then due as a new principal : *in other words,* he muſt acknowledge it a freſh debt, that is, admit the intereſt as a debt ; and acknowledging it a new debt, it follows of courſe that intereſt ſhall again accrue. Or connecting the phraſe with preceding terms, the conſtruction may be thus : ' if he do not pay the amount of intereſt, he muſt renew the contract :' conſequently, he muſt renew the written contract, inſerting as a new principal the original debt with intereſt. In this caſe the expreſſion quoted ſignifies one who is unable to pay the original debt and the whole of the intereſt ; or that may be the ſenſe in all theſe caſes.

"So

" So much of the intereſt accrued as he ought to pay :" this is purpoſely mentioned to remove the doubt how he ſhould pay the intereſt ; whether he may pay any part which is forthcoming, or muſt pay the whole intereſt at once. In the preceding text, " if he pay the intereſt then due," it is ſuppoſed that he pays the whole intereſt ; for no diſtinction is expreſſed. Conſequently, two caſes only are fully declared : and by the laſt phraſe, explained " ſo much of the intereſt as may happen to be due," it is intimated, that after paying ſome part of the intereſt, he ſhould renew the contract, inſerting as principal the original debt with *the remaining* part of the intereſt. Such is the notion entertained by CULLÚCABHATTA. Three caſes therefore ariſe even on this expoſition.

When a debtor renews a contract after paying the whole intereſt *then due*, how can it be wheel-intereſt, ſince it does not correſpond with the texts of VRĬHASPATI and YÁJNYAWALCYA, deſcribing that as intereſt upon intereſt ; for in this caſe there is no intereſt upon intereſt ? It is anſwered, the word *(vrĭdd'hêh)* is in the fifth, not the ſixth, caſe : conſequently, after ſtipulated or legal intereſt, *further* intereſt, which was not promiſed when the debt was originally contracted, is wheel-intereſt, or *intereſt after intereſt ;* there is no difficulty. Such is the interpretation approved by CHANDÉSWARA ; for he ſays, ' the debtor may renew the contract with intereſt on the principal, together with ſome part of the intereſt accrued, or on the principal alone.'

Some explain the firſt text, " if he pay ſome part of the intereſt then due." Conſequently, if ſome part of it be paid, or the whole be unpaid, wheel-intereſt may be ſtipulated. Two forms of it are therefore mentioned by MENU ; not three, for a third is not ſpecified. But when the whole intereſt has been paid, if the bond be then renewed, there is no wheel-intereſt, but a freſh debt by the voluntary act of the debtor. In that caſe intereſt is therefore legal in a moral view : but intereſt upon intereſt is immoral. Or that alſo may be deemed immoral, under the text of VRĬHASPATI (XXXV 7).

But rigid interpreters thus expound the text : he who cannot pay the whole debt, principal and intereſt, being unable to effect its full diſcharge, but able to pay ſome part of the intereſt, or the whole intereſt, (that is, unable to pay a certain portion of the debt,)

debt,) muſt renew the contract in writing: he muſt ſtipulate intereſt afreſh, elſe the renewal of the contract would be uſeleſs: and this has been expreſsly declared by CÁTYÁYANA. How can that be, ſince there is not a new loan? Therefore does MENU declare, " he may inſert *as principal* in the renewed contract the ſum then due." That being the caſe, muſt a writing be executed which contains a fallacy? For this cauſe does the legiſlator add, " if he cannot pay; *literally, not producing the ſum:*" therefore, mentally paying the ſum due, let him borrow it again. If ſome aſſets be forthcoming, may, or may not, a part of the intereſt be paid therewith? On this point the Sage adds, " he has a right to pay as much of the intereſt as is poſſible*."

CCLVIII.

MENU: — A lender at intereſt on *the riſk of* ſafe carriage *(chacravriddhi)*, who has agreed on the place and time, ſhall not receive ſuch intereſt, if *by accident* the goods are not carried to the place, or within the time.

" Who has agreed on the place and time," is thus expounded on the authority of CHANDÉSWARA: the debtor ſays, " I will pay the debt at ſuch a place, and at ſuch a time;" and the creditor aſſents to that propoſal. Such a creditor is a lender at wheel-intereſt, having bargained for intereſt of that deſcription. If he paſs that place and time; if he do not go to that place at that time, the creditor ſhall not receive ſuch intereſt, namely wheel-intereſt: of courſe he muſt receive back the ſum lent without intereſt. Hence, even ſhould intereſt preſcribed by the law be ſtipulated for a certain time and place, it ſhall not be received by the creditor if he do not attend at that place and time: for that ſmall omiſſion annuls legal intereſt.

But CULLÚCABHATTA expounds the text otherwiſe: the term " wheel " denotes the uſe of a wheel-carriage or the like. A lender who has accepted that by way of intereſt, and has agreed on

* According to the literal ſenſe of the text: but it has been otherwiſe tranſlated on the authority of commentators.

on the place and time; for inſtance, *he has agreed, that* "a journey to *Váránasí*, or the uſe of the carriage for a year, ſhall be the only intereſt:" in ſuch a caſe, if the debtor fail in time and place, if he do not carry *goods* to *Váráńasí*, or do not carry *goods* during the year, he ſhall not receive the benefit, that is, the whole hire of the carriage. Conſequently, the whole intereſt is undiſcharged *.

CCLIX.

V RĬHASPATI:—As the original debt, together with *the arrear of* intereſt, becomes a *new* principal, when wheel-intereſt is received after the debt is doubled, ſo does the uſe of a pledge *forborne* become a *new* principal in a ſimilar caſe.

When wheel-intereſt is received after the debt is doubled, as in that caſe the original debt with intereſt becomes a new principal, ſo does the uſe of a pledge alſo become a new principal in a certain caſe; that is, even the uſe and profit of a pledge bear intereſt. For example; a man borrows money, pledging a cow, on theſe terms: "this cow ſhall be milked by you ſo long as I do not diſcharge the debt;" or, "this cow ſhall be milked by you during fifty months;" or, "ſhe ſhall be milked to make good the intereſt of the debt." In this caſe, ſhould the cow accidentally die notwithſtanding the utmoſt care, or be ſtolen by thieves or the like; then, if the debtor do not give a freſh pledge, the value of uſufruct and the principal ſum muſt be paid at the time of diſcharging the debt. But, if the debtor cannot do ſo, then, being ſued before the king or before a publick aſſembly, or attending the creditor of his own accord, he executes a new writing in the form of wheel-intereſt. In that caſe he may execute a bond after paying the value of uſufruct; ſhould even that exceed his means, he may add the principal ſum to that value, and, inſerting as principal the accumulated ſum, execute a new deed, in which ſtipulated intereſt and the like, or legal intereſt at

* The tranſlation, which I quote unaltered, varies from both comments (MENU; Chap. viii. V. 156.)

at the rate of an eightieth part and ſo forth, may be eſtabliſhed by conſent of both parties; and he may cancel the former note.

Here an obſervation ſhould be made. When a debt was contracted on theſe terms, "let this cow be milked until the debt be diſcharged," but, *afterwards*, the cow being accidentally loſt, wheel-intereſt is ſtipulated by the debtor, whom the creditor has arreſted, it muſt not be ſaid, that, *in ſuch a caſe*, the value of the uſe *loſt* before the renewal of the contract ſhould be inſerted therein, and the intereſt ſubſequent to it muſt follow the rate of profit from the uſe *of the cow*. On the contrary, any other rate which may be ſettled, ſuch as an eightieth part or the like, ſhall regulate the intereſt; for, in fact, it becomes a new debt.

CCLX.

VRĬHASPATI:—This rule concerns an acknowledged debt; but he who conteſts the demand, ſhall be compelled to pay, on proof in court by written evidence or oral teſtimony.

This rule, already propounded, *for* the recovery of a debt by expoſtulation and other modes, concerns an acknowledged debt, or one which is aſcertained to be due. But, if the debtor conteſt the demand; if he deny the debt, ſaying, "I owe not the ſum," he ſhall be compelled to pay it, when the debt has been proved by written evidence or the like; he ſhall not be forced to pay it on the ſimple affirmation of the creditor. "Or by oral teſtimony;" the particle is indeterminate, comprehending *verbal* contract and the like. For example; the creditor at ſome *former* time demanded payment of the debt from his debtor; he replied, "I will pay it at the end of a month;" if any honeſt man know this fact, the debt may be thereby proved. So long as it be unproved, the creditor ſhall not uſe the means of recovery. If he do, VRĬHASPATI ordains a fine.

CCLXI.

VRĬHASPATI:—When the debtor appeals to judicature,

ture, or when the demand is unliquidated, he ſhall never be conſtrained by the mere act of the creditor; and he who conſtrains a debtor thus exempted from ſuch conſtraint, ſhall be fined according to law.

If the demand be, for any reaſon, unliquidated or dubious, the debtor, who appeals to judicature, ſhall not be compelled or forced to pay. He who conſtrains a debtor thus exempted from conſtraint or compulſion, ſhall be fined: and the fine thus ordained muſt be underſtood in the caſe where the creditor enforces payment by his own act, or through the king's officers. But, when that is done by the king, expiation muſt be performed, for none has mentioned a fine on *the king* himſelf.

Who is conſidered as a debtor appealing to judicature? The ſame legiſlator replies to that queſtion:

CCLXII.

VRĬHASPATI:—A debtor is conſidered as appealing to judicature, when he ſays, "I will pay whatever ſhall by law be declared to be due."

"When he ſays;" a debtor, who ſays, &c. A debtor appealing to judicature *(criyâvâdì)* pleads or claims *(vadati)* actual proof of a fact *(criyâ)*; ſuch as legal evidence and ſo forth.

The ſame lawgiver explains a demand unliquidated:

CCLXIII.

VRĬHASPATI:—The demand is conſidered as unliquidated, when a diſpute ariſes between the two parties on the ſpecies lent, or its number, weight, or meaſure, *on the value of a pledge* or the like, on the amount of intereſt, or on *the queſtion* whether the ſum be, or be not due.

"On

" On the ſpecies lent;" on the nature of the property lent, whether it be gold, ſilver, or other ſpecies. For inſtance; it is aſcertained, that the debt bears intereſt at the rate of an eightieth part or the like; and it is alſo admitted by the debtor, that he contracted the debt in ſuch a month and year; but it is queſtioned whether the ſpecies lent were gold or ſilver. So, " on its number, weight, or meaſure," it is queſtioned whether a hundred pieces, or eighty, were borrowed. Under the term " and the like" is comprehended ſlavery and ſo forth. The *Retnácara.*

The meaning is, when a ſlave has been pledged, it is queſtioned whether his ſervice were aſſigned for one or two months. Under the term " and the like" are comprehended the queſtions, whether a pledge were aſſigned, or a ſurety given. " On the amount of intereſt;" the doubt is, whether the loan bear intereſt or not, or whether the rate be an eightieth part of the principal. " On the queſtion, whether the ſum be, or be not, due;" for inſtance, the debtor queſtions whether he received the loan or not; whether he repaid it or not; in other words, whether it be due from him or not; the verb *(dá,* give,) here ſignifies payment. When a diſpute or diſagreement ariſes between the two parties, namely, between the claimant and reſpondent, that debt, concerning which it ariſes, is a demand unliquidated. The queſtions above mentioned are intended by the term diſpute. Accordingly MENU (CCXXXIII) directs, that the king ſhall enforce payment of a debt proved by evidence to be juſtly demandable from the debtor. That text has been already expounded.

But when a debtor denies a juſt debt, MENU declares that the king ſhall enforce payment to the creditor of what is proved by evidence, and exact a fine from the debtor.

CCLXIV.

MENU:—In a ſuit for a debt which the defendant denies, let him *(the king)* award payment to the creditor of what, by good evidence, he ſhall prove due, and exact a ſmall fine, *according to the circumſtances of the debtor.*

" Which

" Which the defendant denies ;" which he diſowns.

The *Retnácara.*

In a ſuit for a debt which the debtor denies, affirming that he owes him nothing. CULLÚCABHATTA.

Conſequently the debtor, who affirms that he owes nothing, the king ſhall compel to pay to the creditor what ſhall be proved due by oral teſtimony and ſo forth.

The king ſhall exact a ſmall fine, becauſe the defendant denied a juſt debt. The *Retnácara.*

CULLÚCABHATTA ſtates, ' according to the circumſtances of the debtor.' For inſtance: in a caſe of denial, the king ſhall exact, according to the circumſtances of the man, a leſs fine than the full amercement of twice the amount of the debt, which will be mentioned.

VRĬHASPATI has directed a fine on the creditor who enforces payment of a debt not proved by evidence, ordaining, that " he who conſtrains a debtor exempted from ſuch conſtraint, ſhall be fined according to law." What ſort of fine ſhould be impoſed? MENU replies to that queſtion:

CCLXV.

MENU :—In the double of that ſum which the defendant falſely denies, or on which the complainant falſely declares, ſhall thoſe two men, wilfully offending againſt juſtice, be fined by the king.

The defendant who denies the debt offending intentionally, or the claimant who prefers a falſe claim for ſo much money, ſhall be fined in twice the amount conteſted; becauſe theſe two men, the debtor and creditor, offend againſt juſtice.

The *Retnácara.*

A queſtion here occurs for diſcuſſion: the expreſſion uſed by VRĬHASPATI, " he who conſtrains, &c." ſignifies one who takes meaſures adapted to the recovery of the ſum. The ſame is here ſignified by the expreſſion, " that ſum on which the complainant falſely declares;" for a falſe claim, in theſe words, " pay my debt, which is due from thee," is a meaſure adapted

to

to the recovery of the ſum. Now, if a man only declares falſely on the ſum, and does not proceed to the actual recovery of it, he ſhall be fined in double that ſum; but if he proceed to the utmoſt length, the amercement is no greater: which is a diſparity in the law. If this be alleged, the anſwer is, that the derivation of the term " who conſtrains" ſuggeſts one who takes meaſures adapted to the recovery of debts; it does not neceſſarily ſignify the utmoſt proceſs. Hence VRĬHASPATI and MENU concur: and whether or not a greater fine ſhould be exacted, if the falſe demand be enforced, may be diſcuſſed under the title of Fines. But here another fine (that is, a fine on the debtor,) is incidentally propounded by MENU.

This text, ordaining a fine equal to double the amount conteſted, muſt be underſtood of the caſe where the debt is denied, knowing it to be juſt, or claimed, knowing it to be falſe. Such is the opinion of CULLÚCABHATTA.

CCLXVI.

YÁJNYAWALCYA:—Should a debt, *which was* denied, be proved by evidence, the defendant muſt pay the ſum, and an equal fine to the king; and he who prefers a falſe claim muſt pay twice the ſum which he demanded.

" Denied;" diſowned: if the debtor affirm, " I owe it not." Should that debt be proved or eſtabliſhed by the evidence of witneſſes or the like, he muſt pay a fine to the king equal to the debt conteſted: but if a falſe claim be preferred, the claimant muſt pay a fine to the king equal to twice the ſum for which he ſued.

This text of YÁJNYAWALCYA, preſcribing a fine on the debtor equal to the amount of the debt, muſt be adduced when there is no intentional offence. There is not any inconſiſtency.

The *Retnácara.*

Conſequently there is in fact no variance between CULLÚCABHATTA and the *Retnácara;* for the intentional offence can only be the conſcious affirmation of a falſehood.

Some hold, that ſince the perſon who ſhall receive the ſum is

is not mentioned in the text of MENU (literally tranſlated, "thoſe two men, wilfully offending againſt juſtice, ſhall be forced to pay a fine *equal to* double that ſum"), the meaning of the precept, that the debtor ſhall be forced to pay twice the ſum, is, that he ſhall pay the ſum in queſtion to the creditor, and a fine of the ſame amount to the king. Conſequently, a fine on the debtor, equal to twice the ſum conteſted, is not ordained; the creditor alone ſhall pay a fine equal to double the ſum conteſted, if he prefer a falſe claim. And this alſo coincides with the text of YÁJNYAWALCYA; for both direct, that in whatever caſe a fine equal to the debt ſhall be paid by the debtor, in a ſimilar caſe twice the ſum muſt be paid by the creditor.

That cannot be; for it is unreaſonable to impoſe a double fine for an equal offence.

CCLXVII.

CÁTYÁYANA:—Any creditor who haraſſes a debtor appealing to judicature, ſhall forfeit that claim, and pay an equal fine.

It ſhould not be argued, from the coincidence of this text of CÁTYÁYANA, cited in the *Mitácſhará*, that a fine equal to double the ſum intends the forfeiture of the ſum claimed, and an equal fine. Were it ſo, the fine would not be double, ſince one of the conſtituent parts *of that multiple* would have no exiſtence. The laſt hemiſtich in the text of YÁJNYAWALCYA muſt be underſtood as relating to the conſcious exhibition of a falſe claim. Accordingly,

CCLXVIII.

YAMA declares:—If a rich debtor, through diſhoneſt perverſeneſs, pay not his debt, the king ſhall compel him to diſcharge it, and may take from him twice the ſum *as a fine*.

Therefore, exacting from the debtor twice the amount of the debt,

debt as a fine, the king ſhall compel him to pay it, namely the debt; for that muſt be ſupplied. But if he begin by denying the debt, though conſcious of owing it, and afterwards, being brought into court, acknowledge the debt before the writing or other evidence be produced, he ſhall only be fined in a ſum equal to the debt; for half the fine in queſtion is ordained when *the defendant* himſelf acknowledges the debt.

CCLXIX.

Vyása:—After denying the claim, ſhould the party himſelf acknowledge the due, it is conſidered as a *tardy* acknowledgement, and the fine ordained is half of that *which is impoſed in the caſe of obſtinate denial.*

Of that fine which is impoſed in the caſe of obſtinate denial. By parity of reaſoning, ſhould he acknowledge it in court upon reflection, though previouſly unconſcious of the debt, the fine ſhall be half the debt in queſtion.

This text of Yájnyawalcya, though not inſerted in moſt copies under the title of Loans, is inſerted in this place, becauſe it has been quoted by Chandéswara, and correſponds with texts of Menu and others.

CCLXX.

Vyása:—The claimant ſhall pay twice the ſum for which he preferred a falſe claim:

2. The rule ſhall be the ſame in reſpect of either party who may be confuted, if a conſideration be *ſpecially* pleaded; and likewiſe in reſpect of either party who may be caſt, ſhould a former deciſion be alleged.

"A conſideration;" a ſpecial cauſe. The *Retnácara.*

The following text explains a ſpecial cauſe:

CCLXXI.

Nâreda :—When the defendant acknowledges the *receipt of the* ſum, as declared by the plaintiff, but alleges a conſideration, it is deemed a ſpecial plea *(pratyavaſcanda)*.

The defendant, or debtor, acknowledges the receipt *of the ſum*, but anſwers, " it is true I received the money, but it was given by thee as a gratification for the accompliſhment of thine own buſineſs." In this caſe alſo the rule is the ſame; either party being caſt, whether he be claimant or defendant, ſhall be fined in twice the amount. For inſtance: at the cloſe of the ſuit, if the gift of the ſum as a gratification be proved, the claimant ſhall be fined in twice the amount; if the debt be proved, the debtor *ſhall be fined in the ſame amercement*. Cátyáyana has explained *the plea of* prior deciſion:

CCLXXII.

Cátyáyana :—If a man, though caſt at law, revive the ſuit, he ſhould be conſidered as one previouſly confuted, and is called an appellant from a former deciſion *(prânnyáya)*.

For inſtance: a creditor caſt in a ſuit formerly inſtituted before one umpire, again declares before another judge, " this man is my debtor." That claimant ſhould be anſwered by the defendant with this plea; " he has been already caſt by me:" and that plaintiff is called an appellant from deciſion, or one whoſe ſuit has been already decided. In that caſe, whoever is caſt ſhall be fined; whether the claimant be caſt, or the defendant, in conſequence of the former deciſion appearing to be unjuſt, or on other grounds. " Likewiſe;" that is, he ſhall be fined in double the ſum.

CCLXXIII.

MENU :—A debt being admitted by the defendant, he muſt pay five in the hundred *as a fine to the king;* but if it be denied, *and proved,* twice as much: this law was enacted by MENU.

This text is expounded by CULLÚCABHATTA, CHANDÉSWARA, and others, as relating to fines. Conſequently, a debt being firſt diſowned, but afterwards voluntarily admitted by the debtor, on his being merely brought into court, he muſt pay an amercement of five in the hundred, or a twentieth part of the debt. But if it be denied, and the debtor perſiſt in diſowning it even in court, and it be proved with much trouble by a writing or by the evidence of witneſſes or the like, *he muſt pay* twice as much, or ten in the hundred. CULLÚCABHATTA concurs in this expoſition.

On the ſubject of the firſt hemiſtich, NÁREDA propounds a law:

CCLXXIV.

NÁREDA :—But if a rich debtor, through diſhoneſt perverſeneſs, pay not his debt, the king may take only a twentieth part of the ſum, *if circumſtances be very favourable to the debtor, or if he acknowledge the debt in court.*

That ſum which a rich debtor withholds through diſhoneſt perverſeneſs, the king ſhall compel him to pay to his creditor, and may himſelf take as a fine a ſum amounting to a twentieth part of the debt: and this muſt be underſtood when the debtor voluntarily confeſſes the debt in court; for it correſponds with the text of MENU ordaining five in the hundred.

And this alternative in reſpect of moderate fines ſhould be regulated by the qualities of the debtor, his claſs, and his circumſtances. The *Retnácara.*

On the ſubject of the laſt hemiſtich, YÁJNYAWALCYA propounds a rule:

CCLXXV.

YÁJNYAWALCYA:—A debtor ſhall be forced to pay to the king ten in the hundred of the ſum proved againſt him; and the creditor, having received the ſum due, muſt pay five in the hundred *towards defraying the charges of judicature.*

The ſum being proved, the debtor ſhall be forced to pay ten in the hundred as a fine to the king, making good that amercement out of his own funds. The very ſame gloſs is delivered in the *Dípacalicá;* and this muſt be acknowledged as the opinion entertained by the author of the *Mitácſharà.* It concerns the denial of a debt; for it coincides with the text of MENU, "if it be denied, twice as much" (CCLXXIII).

The laſt part of the text of YÁJNYAWALCYA conveys this ſenſe; the creditor alſo, having recovered his debt awarded by the king, muſt pay five in the hundred or a twentieth part to him as wages, *or towards defraying the charges of judicature.*

A man, ſubject to amercement under theſe texts, ſhall be forced to pay double the debt, a ſum equal to the debt, or ten in the hundred, the fine being mitigated according to the degree of virtue he poſſeſſes, or other circumſtances taken into conſideration. This is declared. But if the debtor, coming into court, confeſs the debt, he ſhall only be forced to pay half as much. This is alſo declared. Conſequently a prieſt, a virtuous ſoldier or the like, and a very indigent debtor, muſt pay five in the hundred; but if he perſiſt in his denial even in court, ten in the hundred; for this conduct is ſuppoſed to be preceded by knowledge of the fact: but if he were unconſcious, half as much. In general, a rich ſoldier and the like ſhall be fined in a ſum equal to the debt, or in half that amercement, according to circumſtances as abovementioned, if he deny the debt through ignorance; but twice as much if he were conſcious of owing the ſum.

On this ſubject CHANDÉSWARA has ſaid in his gloſs on the laſt hemiſtich of the text (CCLXXIII), 'he ſhall be fined in

twice

twice as much as is the amount of the debt.' That is liable to objection; for it would be a vain repetition of the double sum mentioned in another text of MENU (CCLXV).

In like manner should the various fines on the creditor, in the case of a false claim, be regulated according to class and so forth. NÁREDA mentions a distinction in respect of the servile class:

CCLXXVI.

NÁREDA:—Should the sons of twice-born men, by women of the servile class, advance false claims, let the king cause their tongues to be drawn *forth* and pierced with a sharp instrument.

As for the following opinion, we think, it appears inadmissible, because it is unauthorized by CHANDÉSWARA, VÁCHESPATI, 'SÚLAPÁNI, CULLÚCABHATTA, and BHAVADÉVA.

The phrase in the text of YÁJNYAWALCYA (CCLXXV), which is explained "shall be forced to pay by the king," being adduced in reply to the question arising on the preceding text (CCLXXVIII)*, 'by whom shall he be forced to pay his debts in the order in which they were contracted?' there is in fact a *necessary* repetition. Or the first text (CCLXXVIII) relates to the case of two or more creditors, but this text (CCLXXV) supposes the case of a single creditor. Hence the creditor, having received the sum due, must pay five or ten in the hundred, since it is a rule, that 'an alternative is admitted in law, if a question can be proposed, *which is thereby satisfied*;' he must pay either five or ten in the hundred: such is the alternative, and that is settled in practice. For instance; if the creditor must pay five in the hundred when the debt is confessed to be due, *then*, should the debtor confess it in court, but, through dishonest perverseness, pay it not, the king, enforcing payment, shall take from the creditor, towards defraying the charges of judicature, five in the hundred, that is a twentieth part of the debt, as directed by MENU, YÁJNYAWALCYA, and NÁREDA, concurring in the same precept (CCLXXIII,

* In the code of YA'JNYAWALCYA, the verse CCLXXVIII immediately precedes the verse CCLXXV. (See YA'JNYAWALCYA, ch. ii. v. 41 and 42.)

(CCLXXIII, CCLXXV, and CCLXXIV). If the debt be denied, and the defendant plead in the king's court, " I owe nothing," the king may exact twice as much or ten in the hundred, that is a tenth part, as authorized by Menu and Yájnyawalcya (CCLXXIII and CCLXXV): and the expression in the text of Yájnyawalcya, " of the sum proved or recovered," is properly put in the fifth case: and the terms, " through dishonest perverseness," in the text of Náreda, are also pertinent; for, on any other construction, there could be no fine of a twentieth part imposed on the debtor; and it would be improper to exact *no greater fine than* a twentieth part, since he is stated as acting wilfully, through dishonest perverseness. What then is the import of the following rule of Vishnu; for he mentions, as a fine, the tenth part *to be paid* to the king?

CCLXXVII.

Vishnu:—If a creditor sue before the king, and fully prove his demand, the debtor shall pay, as a fine to the king, a tenth part of the sum proved; and the plaintiff, having received the sum due, shall pay a twentieth part of it *towards defraying the charges of judicature.*

This can be no objection; for Chandéswara describes, as a secondary fine, the sum which must be paid by the creditor: ' although the creditor be void of offence, the king may exact, as a fine, a twentieth part of the sum for enforcing payment of it.' Consequently the debtor must pay the sum in the presence of the king, and discharge the debt due to his creditor; and the creditor, having received his due, must pay, as a fine, the tenth or twentieth part of the sum: such is the construction *according to this opinion* *. But we hold it proper to reject this interpretation, for the reason above mentioned.

Others

* To understand the comment, it may be requisite to state the texts as they would be translated were this interpretation received.

CCLXXIII.

Others quote the *Dípacalicá*, that 'the various fines ſhould be regulated by other texts of law, according to the exiſtence or non-exiſtence of an unmitigated offence.' From a creditor of the prieſtly claſs, five or ten in the hundred cannot be taken without offence; for it is declared by MISRA, that the property of a prieſt ſhould on no account be taken by the king; and it is forbidden in the *Mahábhárata*, when treating of the duties of kings, and on other occaſions, to take wealth from *Bráhmanas*. But puniſhment may be inflicted on *Bráhmanas;* for the puniſhment of *mutilation, ſuch as* cutting off the hand, is mentioned in the dialogue between SANC'HA and LIC'HITA contained in the *Mahábhárata;* and the jewel which he wore on his head, was taken from AS'WAT'-HÁMAN: accordingly the gem yielded by AS'WAT'HÁMAN, is mentioned in the firſt book of the *Mahábhárata*.

The *Srì Bhágavata:—Ignominious* tonſure, confiſcation of effects, and baniſhment from the realm, are the puniſhments of reputed prieſts*; no other corporal puniſhment, *or pecuniary penalty*, is allowed.

"Tonſure;" ſhaving the hair. "Confiſcation of effects;" ſeizure of property. "Baniſhment from the realm;" expulſion from the country. This has been ſufficiently explained; and it has been *here* mentioned merely for the ſake of illuſtration.

In a matter of debt, or the like, the demand ſhould be proved by the evidence of witneſſes and ſo forth; but if that be impracticable,

CCLXXIII.

A debt being admitted by the defendant, he (the plaintiff) muſt pay five in the hundred; but if it be denied, twice as much.

CCLXXIV.

But if a rich debtor, through diſhoneſt perverſeneſs, pay not his debt, the king may take only a twentieth part of the ſum *from the creditor.*

CCLXXV.

A debtor ſhall be forced to pay by the king: and out of the ſum proved and recovered, the creditor, who receives his due, muſt pay ten or five in the hundred, *according to circumſtances.*

* Literally, kinſmen of BRAHMA'; by which muſt be underſtood prieſts by birth, yet not ſtrictly obſerving the duties of their claſs.

ticable, by ordeal: if popular proof can be obtained, there ſhall be no recourſe to ordeal. This will be elucidated under the title of Adminiſtration of Juſtice.

Should there be many creditors of the ſame debtor, to whom ſhall his due be firſt paid, to whom laſt?

CCLXXVIII.

ÝAJNYAWALCYA:—A debtor ſhall be forced to pay his creditors in the order in which the debts were contracted, after firſt diſcharging thoſe of a prieſt or of the king.

On the competition of ſeveral creditors, a *Bráhmana*, a *Cſhatriya*, and ſo forth, the debt of the *Bráhmana* ſhall be firſt paid; and afterwards the reſt in their order, as they were contracted: that is, the ſum which was firſt lent ſhall be firſt paid, that which was next lent ſhall be next diſcharged: ſuch is the ſenſe of the text. The debts ſhall not be liquidated by a diſtribution of proportionate ſhares of the debtor's aſſets; nor ſhall the priority or ſubſequence of the debt due to the *Bráhmana* be examined: for the law does not direct it. But, ſhould there be ſeveral creditors of the prieſtly claſs, the order in which the debts were contracted muſt be admitted.

On the competition of a *Cſhatriya* and a *Vaiſya*, the debt of the *Cſhatriya* ſhall be firſt paid, and next that of the *Vaiſya;* for VAJNYAWALCYA ſays, "after diſcharging thoſe of the king*." Again; on a ſimilar competition of a *Vaiſya* and a *'Súdra*, the debt of the *Vaiſya* ſhall be firſt diſcharged, and next that of the *'Súdra*. In like manner, ſhould a triple ſucceſſion be admitted in regard to creditors of mixed claſſes, ranking in three degrees, higheſt, middlemoſt, and loweſt: and ſhould a creditor of the ſervile tribe claim with one of a mixed claſs, the ſame ſhould be underſtood according to circumſtances *of relative precedence.*

On this ſubject CHANDÉSWARA ſays, 'ſhould there be at once creditors of various claſſes, the prieſt ſhall be firſt paid, and next the ſoldier and the reſt; but if the creditors be of the ſame claſs,

* Which may be underſtood generally of the military claſs.

clafs, the debts muft be paid in the order in which they were contracted.' By faying, 'if they be of the fame clafs,' it is evidently meant that the order of the claffes fhould be taken, if many debts be due to men of different claffes. The fame meaning is expreffed in the glofs of the *Mitácfhará:* 'if the creditors be of equal clafs, 'the debtor fhall be compelled by the king to pay the debts in 'the fame order in which they were contracted; but if there be 'variance of clafs, in the order of *the claffes*, facerdotal and the 'reft.' For "the order in which the debts were contracted," is there applied to the cafe of equal clafs; and the order of claffes, facerdotal and the reft, is there prefcribed in the cafe of unequal clafs. There is no difficulty in fuppofing the fame meaning in the glofs of the *Dípacalicá:* 'fhould there be more creditors than 'one, the debtor fhall be forced to pay the debts in the order in 'which they were contracted; *but* if there be at once creditors of 'the prieftly and military clafs, and fo forth, he fhall be forced 'to pay the fums due to the *Cfhatriya* and the reft, after firft dif- 'charging the debt of the *Bráhmana*, even though laft contracted.'

CCLXXIX.

CÁTYÁYANA:—If there be many debts at once, that which was firft contracted fhall firft be paid, after thofe of a king or of a prieft learned in the *Véda**.

"Of a prieft learned in the *Véda;*" after the death of a *Bráhmana*. "Of a king;" of a *Cfhatriya*. This text is alfo intended to fhow a cafe of preferable payment in the order of the claffes. It muft therefore be underftood in the fame fenfe as above mentioned.

CCLXXX.

CÁTYÁYANA:—If all the contracts were written in one

* "But when the effects are few, the creditors numerous, and the debtor is fold "into flavery, all fhall receive *their fhares of* the price, in proportion to their juft "demands, becaufe there are not affets." I cite this paffage from the *Viváda Chandra*, becaufe it contains a rule affirmed by the *Maithila* fchool, and extended to the cafe where the debtor's effects only are fold.

one day, the debts, payment, ſubſiſting demand, and intereſt, ſhall be equal; otherwiſe, in order of time.

From the expreſſion "in one day" it appears that no account ſhould be taken of the priority and ſubſequence of ſeveral debts contracted on the ſame day; elſe the text would be nearly unmeaning. Conſequently, the conſtruction of the phraſe is this: if the contracts were written in one day, that is, if debts contracted with many perſons were reduced to writing in one day, payment, ſubſiſting demand, and intereſt, ſhall be equal in reſpect of thoſe debts. Therefore, collecting all the aſſets of the debtor, which are forthcoming, the creditors ſhould divide them in ſhares proportionate to the amount of their reſpective debts. A diſtribution of ſhares proportionate to the amount of the debts may be thus exemplified: ten *ſuvernas* are due to one, two to another, and four to a third, but the aſſets of the debtor amount to eight *ſuvernas* only; in this caſe half a *ſuverna* ſhall be received for each *ſuverna;* and he to whom ten *ſuvernas* are due, ſhall receive five *ſuvernas;* he to whom four *ſuvernas* are due, two *ſuvernas;* and he to whom two *ſuvernas* are due, one *ſuverna.* But it muſt be underſtood, that in this caſe the principal and intereſt are added together. Hence, if one have a claim for intereſt ſpecially ſtipulated, or the like, and the other for legal intereſt only, the intereſt being unequal, the payment to each ſhall be regulated by the intereſt receivable by him. But if ſome part of the intereſt have been received by any one creditor, that ſhall not be required from him, but it ſhall be deducted from his debt. However, in the caſe of intereſt by enjoyment, the principal only ſhall be admitted in the account. For inſtance: the principal ſum amounts with intereſt to ten *ſuvernas*, and two *ſuvernas* have been received on a former day; the *remaining* eight *ſuvernas* only ſhall be admitted on a ſubſequent day, when a dividend is made: the two *ſuvernas* received on a former day ſhall not be confounded with the debtor's aſſets, for that debtor has no title to money actually received by the creditor. But afterwards he ſhall not have enjoyment of the whole *pledge*, for the debt is leſſened in compariſon with the former due. Nor ſhall the creditors divide that pledge, ſince it is poſſeſſed by one creditor alone.

alone. In fact, the creditor, who has received a pledge to be used, shall not receive a share of the dividend; for he has trusted to the chattel possessed by him for the recovery of his debt. He also who has a pledge for custody in his power, such as a copper caldron or the like, shall have no share of the dividend; but he may demand the sale of the pledge. Yet, if the debtor or any other person say, "this man has in his possession a chattel belonging to the debtor, let it be sold and shared by all the creditors," that shall not be done; for the debtor cannot sell a chattel possessed by the creditor, and the debtor's title *to the pledge* is at that time limited. It is the same also in other cases. In short, ascertaining and writing down the debts of all *the creditors*, with the interest due on them, a distribution of the debtor's assets should be made.

All this should only be done when the term has elapsed. Hence, if debts be contracted with several persons in one day, and the term of one loan be two years; of another, four years of a third, five years: in this case, should a distribution be made at the close of the fourth year, no dividend shall be received by him who claims under a contract for the term of five years; for his claim is weaker, since the term is unexpired. If he be so fortunate as that the debtor should survive and acquire wealth, then shall that debt be discharged. Should a further distribution of assets be made after the expiration of the fifth year, he shall receive an equal dividend in proportion to the debts then due: the whole assets, or a larger share, shall not be received by the creditor, who received no dividend at the former distribution; for no law ordains it. This and other points may be argued.

But if the debts of all the creditors be not fully discharged, they may preserve their claim for the remainder. This also must assuredly be proportionate to the *original* debts, *since the dividend was so*. Therefore the legislator adds, "subsisting demand," or literally preservation; the term is synonymous with the owing of the debtor*.

If the debtor's assets only suffice for the discharge of interest due to all the creditors, or to any one of them, then interest only shall

* This exposition appears unsatisfactory; *racshan'a* is synonymous with *d'háran'a* in some senses, not in all. Sir W. JONES translated it "profits of a pledge or the like." Nevertheless, I follow the gloss.

ſhall be received, but the principal ſhall bear no further intereſt. However, when, in conſequence of a term having been ſtipulated, a diſtribution of aſſets is made before the period which would regularly double the debt, it may bear further intereſt after the dividend. Therefore the Sage adds " and intereſt." It is *alſo* the practice, for a creditor not to accept *payment of* his principal while intereſt remains due. It follows, that, if debts have been contracted with two or more creditors on one day, a preference being then diſallowed, if the debtor cannot fully diſcharge all the debts, whatever aſſets are found, ſhall be taken by all the creditors, and their further demand may be retained ; or the intereſt may be received, *and the principal remain due.*

This may be obſerved ; if he, by whom no term was ſtipulated, demand the debt, a dividend ſhall be paid to him ; if he do not demand it, but the period in which a debt is doubled be paſt, the debtor ſhould call him and pay the ſum. In like manner, ſhould the term of any man's loan be expired, the debtor ſhould call him. But, if any creditor be abſent in a foreign country, his dividend ſhould be depoſited with a confidential perſon. Such is the full meaning of the law.

The following text propounds a diſtinction :

CCLXXXI.

CÁTYÁYANA :—That capital on which it is proved that the aſſets were gained, and no other debt, must be repaid by the debtor *out of thoſe aſſets.*

If there be at once many creditors of the ſacerdotal and other claſſes, he through whoſe loan the aſſets were gained muſt be paid out of thoſe aſſets ; not any other creditor. Should a ſurplus remain, it ſhall be paid to the other creditors, by a dividend, or in the order of claſſes. For example : borrowing a ſum from one man, and therewith paying the revenue which is due to the king by the cuſtom of the country, or ſupporting his own dependants and the like, the debtor conducts agriculture ; the produce of that culture is applicable to the payment of the debt due

due to that creditor alone. But if he borrow money from another man, and during the feafon of culture perform other work to avoid idlenefs, that loan muft alfo be confidered as applied to hufbandry, *which was his chief employment* : and fuch is the practice. But a debt contracted for the charges of celebrating nuptials or the like, even though it be contracted on the fame day, conftitutes a weaker claim in refpect of wealth acquired by agriculture, fince it was not applied to that purpofe.

Again ; in the cafe of commerce and the like, affets gained by traffick, and fimilar means, are applicable to the payment of the creditor claiming a debt contracted for the purchafe of goods, for the difcharge of the king's duties, for the maintenance of fervants, and fo forth. In like manner, borrowing a fum from one man, he redeems a pledge hypothecated to another ; in that cafe, fhould the debt remain undifcharged, he muft deliver or fell that pledge for the payment of that creditor and no other : he has no right to pledge the chattel to any other man. Again ; a hufbandman cultivates land belonging to a certain perfon ; and the landlord borrows money from the hnfbandman, or the hufbandman from his landlord ; in either cafe, the debt of that creditor alone fhall be difcharged out of the grain produced from that land : for thofe affets, confifting in grain, were produced from that capital, whether land, or feed and plough. Such is the confiftent method of CHANDÉSWARA and the reft.

However, fhould he deliver thofe affets to another perfon through miftake, or hypothecate that pledge to another creditor, the act is valid ; for the affets were the property of the debtor. Neverthelefs, the creditor may forbid it ; and if the debtor flight that oppofition, he fhall be fined. In like manner, even though unoppofed, if he do fo deliberately, he fhall be fined ; for the reafon of the law is the fame. This fhould alfo be argued in the cafe of payment *to a favoured creditor* neglecting the order in which the debts were contracted, or the order of claffes.

Here a queftion occurs for confideration. If the landlord or the hufbandman above mentioned firft borrowed money from another, pledging to him the produce of the land for that year, and afterwards receive a loan from the hufbandman or landlord, in that cafe—who fhall be paid out of that produce ? To this queftion

queſtion it is anſwered, the whole ſhall not be paid to the laſt creditor; for, were it ſo, there could be no ſuch practice in money-lending as that of pledging the produce of land owned or cultivated by another; nor *ſhall it be paid* to the firſt creditor, for the text would be almoſt unmeaning, ſince no loan would be made without a pledge, leſt a ſubſequent hypothecation *invalidate the prior lien.* To this it may be replied, ſince the ſubſequent loan had not taken place when the pledge was made, there can be no ſuch lien on the land; the hypothecation is therefore valid, and a ſubſequent loan cannot annul the valid hypothecation, and eſtabliſh ſuch a lien: it is therefore reaſonable that the debt of the mortgagee ſhould alone be diſcharged. However, the ſecond creditor reſiſts the diſpoſal of the produce until his own debt be paid. This many excellent perſons maintain. We hold, that an hypothecation ſubſequent to ſuch a debt, *which gave a lien,* is not valid; and the text therefore is not unmeaning. But ſome lawyers ſay, the text of CÁTYÁYANA (CCLXXXI) ſhould be otherwiſe applied. A lien immediately ariſes on that produce, ſimilar to a pledge; ſince there is no authority for a reference to the *time of* contracting the debt. Hence the laſt creditor ſhould alone be paid. But if the mortgagee, *at firſt* declaring, " I will not lend the ſum," *at length* accepts the pledge with the aſſent of the other party, the hypothecation is valid.

The diſtribution *of dividends* ſhould be made in the preſence of the king's officers, or of arbitrators, to remove the apprehenſion of unmitigated offence; the debtor ſhould not make the diſtribution in the privacy of his own houſe. This has been ſufficiently diſcuſſed.

CCLXXXII.

YÁJNYAWALCYA:—When the debtor has paid the debt, let him cauſe his writing to be torn, or another to be made as his acquittance; but a debt contracted before witneſſes, muſt be diſcharged before witneſſes.

When the debt is fully diſcharged, let the debtor cauſe the writing

writing to be torn: but if the note be miſſing, let him cauſe another writing to be made as his acquittance. A debt contracted before witneſſes, he ſhould diſcharge before witneſſes.

The *Dípacalicá.*

He ſhould cauſe the writing to be ſo torn, or cancelled, that it may not be again produced on another occaſion. But if the writing were atteſted, the payment ſhould be made, and the deed cancelled, before witneſſes; for ſuch is the import of the text, "a debt contracted before witneſſes, &c." elſe it might be ſuſpected that the debt was undiſchaged. "As his acquittance;" the term is in the ſeventh caſe, with a cauſal ſenſe. Let him cauſe another writing to be made; namely, that which is denominated a written diſcharge or acknowledgement of payment. This alſo ſhould be atteſted, or be made in the creditor's own handwriting; as ſuggeſted by a text cited in the *Vyavahára tatwa*, and already quoted in this work (XIII).

The form of the writing ſhould be regulated by the eſtabliſhed cuſtom of the country, and it has been already mentioned in the diſcuſſion on written contracts of debt: the very ſame form ſhould be admitted in the preſent caſe; for it is directed generally, that "whatever contract ſhall have been concluded by mutual conſent," a written memorial of it ſhould be executed in that form (XVI). But, ſince that text is placed under the title of Loans and Depoſits, the name of the lender or owner is directed to be firſt inſerted in the writing: here the reverſe ſhould be done; for the word lender there intends the perſon whom the obligation regards; that is, him to whom the writing is delivered. Hence, in a deed of gift, the name of the donee *ſhould be firſt inſerted;* or in a bill of ſale, the name of the vendee. This and other points may be argued. But in fact, ſays a certain author, the debtor is at that time an owner *delivering his own;* for he differs in nothing from one who delivers property. Hence the variation conſiſts in this; that the debtor's name ſhould be firſt inſerted, becauſe the debtor is the perſon whom the obligation regards. The creditor ſhould ſign his name on the top of the writing *; for the word "borrower," in the text of YÁJNYAWALCYA (XVIII),

* There is an inconſiſtency in regard to the place of ſignature, which I cannot well reconcile.

(XVIII), intends the perſon who executes the writing. This and other points ſhould be underſtood.

CCLXXXIII.

VISHNU:—A debt contracted only before witneſſes, may be diſcharged before witneſſes only; *but*, a written contract being fulfilled, the writing ſhould be torn.

"Before witneſſes only;" elſe, if the payment be unatteſted, how can the debtor prove that payment, when the creditor ſubſequently ſues before the king for the debt proved by verbal or other evidence?

CCLXXXIV.

NÁREDA:—Let the creditor give a writing after the debt has been acquitted; or, if that cannot be, let him make a *publick* acknowledgement: this ſhall be a mutual acquittance of the creditor and debtor.

Let him give a writing, that is, a written diſcharge, if the note be not at hand. "After the debt has been acquitted;" after it has been fully diſcharged. "A publick acknowledgement;" a declaration made before *unconcerned* perſons, that the debt has been paid by this man. The *Retnácara.*

Conſequently, if a written acquittance cannot be given, the payment ſhould only be made before witneſſes. Should no writing be given, nor atteſtation made, the debtor might complain before the king, *in theſe words*, "he has exacted from me more than was due;" or, "he refuſes to give a receipt." Hence the creditor alſo would need an acquittance; it is therefore ſaid, "*a* mutual *acquittance or releaſe*."

When the whole ſum is not paid, but a part only, how ſhould the bond be cancelled? For this cauſe YÁJNYAWALCYA adds *the following rule:*

CCLXXXV.

CCLXXXV.

Yájnyawalcya :— If the debtor pay by little and little, let him write the ſums paid on the back of his written contract, or let the creditor give a receipt ſigned by his own hand.

" A receipt ;" a written acknowledgment of a ſum received.
The *Retnácara.*

Let him write, " Such a ſum this day received by me, in part hereof, from ſuch one, the debtor." But the form muſt be regulated by the *current* practice alone. In his receipt ſhould be written the ſum which is paid, and the date on which that very ſum is paid: he may ſubjoin ſums previouſly received. Thus, he ſhould write, " ſo much money received this day, ſuch ſums received earlier, making in all ſuch a ſum *received to this date.*" Elſe, through the forgetfulneſs of his creditor, the debtor might in courſe of time obtain ſeveral receipts for a ſingle payment ; or, although that have not been done, the creditor might allege that it was done. This diſtinction appears admiſſible in our apprehenſion.

From the phraſe " let the debtor write the ſums paid, &c." it appears that the debtor alone ſhould write the ſums paid by himſelf on the back of the written contract : but the receipt ſhould be written by the creditor ; for the phraſe " ſigned by himſelf" may be properly referred to the creditor.

CCLXXXVI.

Vishnu :—Part only being paid, and the writing not being at hand, let the creditor give an acquittance written by himſelf.

" Part only being paid ;" the whole amount of principal and intereſt not being fully diſcharged ; (for inſtance, a diſtreſſed debtor, unable to pay the whole ſum at once, pays it by little and little, from time to time :) in this caſe, the debtor ſhould write

the ſums paid by him on the back of the written contract; or, the deed not being at hand, the creditor ſhould give another writing to this effect, " this ſum has been received by me." Such is the ſenſe.

But if the writing be not at hand, then, even if the whole due be diſcharged, the creditor muſt give a writing ſigned by himſelf; therefore does the legiſlator expreſs, " and the writing not being at hand." Or the noting of partial payments on the back of the bond, as mentioned by YÁJNYAWALCYA, and the acquittance ſigned by the creditor himſelf, as mentioned by VISHNU, admit of two caſes: if the writing be, or be not, at hand, and the debt be fully or partially diſcharged, the creditor ſhould give an acquittance ſigned by himſelf. Herein CHANDÉSWARA concurs: or the expoſition may be thus; if the writing be at hand, and a partial payment be made, it ſhould be noted on the back of the bond, and a ſeparate receipt ſhould be alſo given, agreeably to the texts of both Sages. Should the creditor ſubſequently affirm, " this debtor obtained the writing by artifice from my houſe, and has written ſums on it though never paid," that aſſertion may be eaſily confuted.

If the creditor produce not the writing, nor give one ſigned by himſelf for a ſum received, what ſhall be done? On this ſubject NÁREDA propounds *the following text:*

CCLXXXVII.

NÁREDA:—Having received a ſum, the creditor ſhould give a receipt to the debtor; but he who refuſes, when required to give *back* that *for which he granted no receipt,* ſhall forfeit the remainder of the debt.

" Having received " the intereſt: ſuch is the meaning. He who refuſes *both* to *give an acquittance and* repay the intereſt when demanded, &c. The *Retnácara.*

" Intereſt " is here ſupplied. The term ſignifies the intereſt of the debt. But, in fact, that is merely intended for elucidation; the real ſenſe is an incomplete payment. The uſe of ſupplying hat term is this: when a part of the principal has been paid to

the creditor, and he neither gives up the writing, *that the payment may be noted*, nor grants a receipt; in that cafe, even though the creditor may be difpofed to repay it, the debtor does not demand the fum paid; for, *were it repaid to the debtor*, the fum would bear further intereft from that day. Should a creditor, who has received a fum from the debtor, neither permit him to write the fum paid on the back of the contract, nor give the debtor a receipt figned by himfelf, furely the debtor will redemand the fum paid by him *as intereft*; if the creditor alfo refufe to reftore it, he fhall forfeit the remainder of his debt. The forfeiture of the balance is, as it were, a fine on the creditor for that offence.

CCLXXXVIII.

VRĬHASPATI: — If he who has recovered his debt by the mode of moral duty, or any of the others, refufe to write a receipt on the note, or to give an acquittance, the fum that was due fhall be forfeited.

That creditor who has enforced payment of his debt by the mode of moral duty, or any of the others above mentioned, but will not permit the debtor to write the fum paid on the back of the note, or, if this were impracticable, who refufes to give a receipt, which is the next ftep, *fhall incur this forfeiture*. 'Through knavery' fhould be fupplied in the text. It alfo intends atteftation, as mentioned by NÁREDA: the full meaning is, if he alfo refufe an atteftation of the payment. In thefe cafes, the fum due to the creditor would be forfeited; the mood is potential. Becaufe the fum which has been actually paid cannot be proved by the debtor without a writing or other evidence; hence, fince he may be liable to pay it again, the creditor may poffibly receive more than his juft due: fuch is the fenfe of the text. Confequently, over-exactions being improper, nothing fhould be done which tends thereto. But if any one do that which ought not to be done, he fhall furely be punifhed. This is intimated in the text of VRĬHASPATI. It is therefore abfolutely neceffary to write the fum on the back of the note, or grant a receipt or the

 like:

like: ſuch is the full ſenſe of the text; and puniſhment conſiſts in the forfeiture of the balance, as ordained by NÁREDA. Since no law directs it, the fine ſhall not be received by the king. This expoſition of the text of VRĬHASPATI, though not delivered by any *former* author, ſeems elegant.

Here the term employed *(vriddhi)** ſignifies loſs or forfeiture.

The *Calpateru*.

For the verb *vardh* is inſerted in the *Ganacámadhénu*, with the ſenſe of fill, and cut; and this word is derived by the ſubſtitution of *vrĭdh* for *vardh*, *a change* which often occurs with this ſuffix. Or the verb *vrĭdh*, repreſenting the verb *vardh*, as well as its own regular ſenſe of growth or increaſe, through that medium preſents the ſecondary ſenſe of abſciſſion, which is the regular meaning of the verb *vardh*; as the term *dwirépha* (two rs.) ſignifies a black bee, through the medium of the word *bharmara* (which contains two rs.); and the verb *ás*, ſit, preceded by the particle *upa*, ſignifies adoration or worſhip, in the following verſe of the *Cuſumánjali*, a treatiſe of philoſophy †:

He, the Supreme Spirit, is here deſcribed, the worſhip *(upáſti)* of whom wiſe men conſider as the road to heaven and final beatitude.

Conſequently, if the creditor, through knavery, do not permit the ſum to be written on the note, nor give a receipt, nor cauſe his acknowledgement to be atteſted by witneſſes, he ſhall forfeit the ſum that was due, namely the ſum lent by him: and the forfeiture muſt be underſtood, as in the text of NAREDA, to be the forfeiture of the balance.

The *Cámadhénu* and HELÁYUDHA read *náſau vrĭddhim avápnuyat*, he ſhall not receive advantage, inſtead of *taſya tad vrĭddhim ápnuyat*. HELÁYUDHA ſays in his gloſs: 'if the creditor, having 'received a ſmall part *of the debt*, do not ſuffer the ſum to be 'written on the back of the note, nor give a receipt, then, ſince 'he forfeits the remaining ſum, he receives no intereſt or advan- 'tage

* Taking the word in its uſual acceptation of intereſt, Sir WILLIAM JONES tranſlated the text, "the debtor ſhall gain the intereſt that was due."

† By UDAYANA'CHARYA; a treatiſe written to prove the exiſtence of GOD, conteſted by the Atheiſts of his day.

' tage on it; for that is prevented by the forfeiture of the balance.' In effect there is no variance between the *Calpateru* and HELÁYUDHA.

The refusal to write a receipt, or give an acquittance for the sum paid, must be understood as arising from an intention of obtaining a second payment of the same sum: for, otherwise, there would be an inconsistency. The *Retnácara.*

' Do not suffer the sum to be written on the note;' " by the debtor" should be supplied.

The creditor lends money solely for the sake of gain; and by that gain or interest he receives an advantage on his principal. Should even the remaining principal be forfeited, how can he obtain advantage from the principal sum? Consequently, by declaring that he has no advantage from the sum due, the forfeiture of the remainder is, in some sort, indirectly suggested; since the text coincides with that of NÁREDA. ' For that is prevented by the forfeiture of the balance;' this is a repetition intended to suggest the penalty as the *immediate* cause of *his* obtaining no advantage. Or that gloss may be read, ' for the forfeiture of the balance is the subject treated;' that is, it has become the subject through the text of NÁREDA. ' He shall not receive advantage,' suggests the penalty of losing the remaining sum; therefore does the commentator say, ' for the forfeiture of the balance is the subject, &c.' Such is the exposition of the *Calpateru* and HELÁYUDHA.

According to the *Cámadhênu*, the forfeiture of interest only is mentioned; not the forfeiture of the remaining principal. But in fact, according to this opinion, the sense so far explained must be further extended to the same purpose: else there would be a contradiction, repugnant to reason, in the forfeiture of the balance when a creditor has casually written no receipt or given no acquittance, but without intending to obtain a second payment of the same sum, *while on the other hand a less penalty fell on a wilful offence.* Consequently the text of VRĬHASPATI has the same import with that of NÁREDA, according to the gloss of HELÁYUDHA and the rest. Like mutilation and other punishments *for other offences*, the forfeiture of the balance is the punishment for the offence of refusing to write a receipt and so forth.

Some interpreters hold, that even on the other reading (*ne chaivô-*

chaivôpagatam dedyát tasya tad vríddhim ápnuyát) the text may be explained in its literal sense, consistently with the gloss of the *Calpateru*, as denoting a forfeiture; while the word *vríddhi* retains the sense of gain, for the last negative is connected with the word "*ápnuyat*, may obtain," and the former negative (in the preceding hemistich) is connected with the word "should write," as well as with the word "*dedyát*, should give."

But the text is thus expounded in the *Párijáta*: 'that sum which has been paid by the debtor to the creditor, shall obtain interest; that is, it shall carry interest.' Consequently, as the sum lent by the creditor shall be received back from the debtor with interest thereon, so shall a sum which has not been written on the back of the note, or for which no receipt has been obtained, be received back by the debtor from the creditor with interest thereon. This is stated by the Sage.

The creditor's motive may be generous. Thus a thousand *suvernas* were originally received by the debtor from the creditor, and five hundred *suvernas* have been subsequently paid, but not written on the back of the deed, nor any receipt given for them: in this case there is no forfeiture of interest on the thousand *suvernas* from the day when five hundred *suvernas* were paid, but interest runs on the five hundred *suvernas* from the day when they were paid, and that interest shall be paid by the creditor to the debtor. At the time of settlement, calculating interest in favour of both, and deducting the sum paid by the debtor, with interest thereon, from the sum lent by the creditor, together with the whole amount of interest, the remainder only shall be paid by the debtor. The creditor sustains some loss by this adjustment. For example: On the sum of one thousand *suvernas*, interest at the rate of an eightieth part amounts in one month to twelve *suvernas* and a half, and accumulates in six months to seventy-five *suvernas*: should five hundred *suvernas* be paid by the debtor at that very period, and the debt be finally discharged at the close of the year, the payment made by the debtor has accumulated to five hundred and thirty-seven *suvernas* and a half, and the sum lent by the creditor has accumulated to eleven hundred and fifty *suvernas*; and deducting therefrom five hundred and thirty-seven *suvernas* and a half, six hundred and twelve *suvernas* and a half are receiveable from the debtor. But if the debtor wrote that sum as paid

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on the back of the note, or received an acquittance, intereſt amounting to ſeventy-five *ſuvernas* was receivable when the five hundred *ſuvernas* were paid: and, deducting that, four hundred and twenty five *ſuvernas* only ceaſe to bear intereſt; for ſo much only of the principal is diſcharged, and five hundred and ſeventy-five *ſuvernas* remain due out of the principal ſum. Intereſt thereon for ſix months amounts to forty-three *ſuvernas* two *máſhas* and five *racticás*; adding this *to the remaining principal*, the ſum due amounts to ſix hundred and eighteen *ſuvernas* two *máſhas* and five *racticás*. The gain would therefore be five *ſuvernas* ten *máſhas* and five *racticás*; by rejecting which the creditor manifeſts generoſity.

This, according to all opinions, can only be ſuitable when the agreement was made for intereſt payable at fixed periods. In ſome inſtances the debtor would ſuſtain a loſs. For inſtance: when ſtipulated intereſt has been fixed by the creditor at the rate of two *panas*, that intereſt is receivable by the creditor alone; but legal intereſt only ſhall be received by the debtor, ſince no other rate was expreſsly ſettled. When a ſum is paid by the debtor in liquidation of the debt, further intereſt at the ſtipulated rate ceaſes, on the ſum paid, from the date of payment: but when the ſum paid carries ſeparate intereſt, the debtor ſuſtains a loſs, ſince he obtains legal intereſt only, while the creditor obtains the ſtipulated intereſt. It may be argued ſimilarly *in other caſes* according to circumſtances. With an ignorant creditor the motive may be diſhoneſt. For inſtance; he will not allow the ſum to be written on the back of the note, and refuſes to give a receipt, apprehending, "if I accept this ſum in liquidation of the debt, my intereſt will ſtop;" he is not aware that, if the ſum paid by the debtor be received otherwiſe, it will bear intereſt. This and other points may be argued.

In this caſe, if more than the principal and intereſt have been delivered by the debtor to the creditor through ſome miſtake or the like, then, calculating intereſt thereon, the debtor is entitled to recover from the creditor the exceſs above the principal and intereſt due; for the exceſs is ſimilar to a debt due by the creditor. If the exact ſum have been paid, but the period which limits intereſt receivable by the creditor be paſt, the debtor would be entitled, in that caſe, alſo to obtain intereſt on the ſum paid by him: however, he does not exact it. All this ſhould be underſtood in

 thoſe

thofe cafes only where the fum is delivered with a purpofe, *which may be expreffed in thefe words,* " this property fhall remain for the prefent in thy power ;" the debtor fhall have no intereft, fince the fum delivered was fimilar to a depofit. This and other points may be inferred from reafoning.

This method, authorized by the glofs of the *Párijáta*, is confiftent with practice. According to this interpretation, a fine on the creditor is not propounded by VRĬHASPATI. But others explain the terms *of the text*, (which have been tranflated, " who has recovered the fum *or debt*,") in the appofition named *carmadháraya*; " the fum recoverable, or of which payment might be enforced," that is, in other words, the remaining fums. It fhould therefore be written on the back of the note, or on an acquittance, " fo much money this day paid, and fo much remaining due." On failure of that, the further fum to be recovered, *or balance of the debt*, is forfeited ; taking the word *vrĭddhi* in the fenfe of lofs, in conformity with the glofs of the *Calpateru*.

Is not a forfeiture incurred by the creditor, then, only when the payment made by the debtor is proved, as well as the fact of its not having been written on the note ? But if the creditor neither permit that to be written, nor give a receipt, how can the payment made by the debtor be proved ? Still lefs can his refufal to permit the endorfement be proved. It fhould not be faid, the fact may be proved by witneffes ; for, if the creditor receive the fum in the prefence of witneffes, he incurs no penalty, fince he is guilty of no offence. To this it is anfwered, when the debtor, having paid a fum to his creditor, demands an acquittance or other acknowledgement, but the creditor attempts to delude him, faying, " I will give an acquittance *hereafter* ;" then the debtor, at that very time bringing other witneffes, fhows the money lying before the creditor, or obliges him to acknowledge that " fo much money has been paid by this man." His delufive promife of giving an acquittance, and that evidence, are both valid arguments of proof. In fuch a cafe only fhould the forfeiture of the remainder, as mentioned by VRIHASPATI, be admitted.

In like manner, when the debtor pays a fum counted by a merchant, then the merchant proves the payment ; the note wanting an endorfement is proof of no endorfement having been written,

and

and the refusal to give a receipt may be established by the want of evidence to prove the delivery of a receipt. Again; some person, standing in another place, observes the whole transaction; he also is a *competent* witness. This and other *modes of proof* are mere examples.

But, if the debtor, through knavery or the like, neither accept a receipt, nor write the payment on the back of the note, then also, from parity of reasoning, the debtor incurs a forfeiture of the sum paid, though it have not been noticed in texts of Sages or commentaries of Authors. This we deem proper and consistent with reason.

What knavery can the debtor purpose, that he should be averse from obtaining evidence of the sum paid by him? Having paid ten *suvernas*, he will affirm that he paid twenty *suvernas*: afterwards, when a doubt arises from the want of proof, he says, "let this man take his oath;" if the creditor, fearful of disrepute, refuse the oath, he loses his due: or, if he take the oath through love of money, the debtor would declare in various companies of worthy persons, "this man is dishonest; taking an oath, he has extorted from me a sum not justly due." This and other points may be argued.

Here an observation should be made. In all doubtful cases, a decision should be grounded on written documents or verbal evidence. If those documents be in the handwriting of another person, they are good evidence, provided they be attested, under a text above cited (XIII). But if all the witnesses be dead, the document should be collated with other *instruments in the* handwriting of the same persons.

CCLXXXIX.

YÁJNYAWALCYA:—In a disputed case the document must be proved by the handwriting of the party or the like, by reasonable inference, by *evidence of* the contract *which the instrument records*, by a *peculiar* mark, by connexion *and dealings of the parties*, by *the contents of* the document, or by *previous recourse to* measures *for recovery*.

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This document is not admitted by both parties; and it is queſtioned whether it have, or have not, been lately written by one party on paper to which the appearance of antiquity has been given by the application of muſtard-ſeed or the like: in this caſe proof muſt be deduced from the handwriting of the party or the like. But if it were written by another perſon, it muſt be proved by the handwriting of him *who wrote it.* In the *Dípacalicā* " reaſonable inference " is explained ' what ſeems reaſonable in reſpect of that man, at this time, and in this place.' " The contract," ſuch as the deveſture of property or the like, proved by witneſſes. " A mark," not generally uſed. " Connexion;" previous dealings of receipt and the like between the giver and receiver. " The document;" probably authentick for ſuch a ſum lent by this man. " Meaſures;" modes of recovery. By theſe proofs, namely, by the handwriting of the party, and the reſt, let a conteſted document be juſtified. Under the term " or the like " is comprehended the handwriting of the witneſſes or ſcribe.

CCXC.

CÁTYÁYANA:—Should the handwriting of the debtor, whether living or dead, be queſtioned, the document muſt be collated with other inſtruments in his own handwriting.

" Reaſonable inference," according to the preceding gloſs, may be thus exemplified. This man's father deceaſed at that time; he needed a loan for his father's funeral rites, but obtained it from no other perſon; it is therefore reaſonable to conclude that he contracted a debt with this creditor alone. This and ſimilar points ſhould be alſo argued in the caſe of gift and the like. It is affirmed by this man, that he ſold a cow for the purpoſe of lending this money; " that is probable, *ſays a witneſs, for* I know that he did ſell a cow at that very time."

" An uncommon mark;" the practice of uſing ſuch a mark in writing may be evidence againſt the individual perſon, not againſt any other. Or the mark may be a plough, uſually deſigned as a ſignature by huſbandmen; a wheel, by a potter; a particular

particular weapon, by thoſe who bear ſuch weapons ; and *a hand and arm*, a type of the thunderbolt, by certain perſons, and ſo forth. " Connexion and dealings" are obvious. "*Contents of* the document ;" by the term here uſed, the written document is ſignified: it is probable that four *ſuvernas* may have been lent by this wealthy perſon to that indigent man ; hence this document is probably authentick. " Modes of recovery ;" for inſtance, if he were not indebted to this man, why did he promiſe, when formerly brought before the king, that he would pay after the lapſe of ſeven days? Conſequently, the previous recourſe to meaſures for recovery, ſuch as the mode of moral duty and the reſt, removes the doubt concerning the writing.

" With other inſtruments in his own handwriting" (CCXC); if the ſcribe ſay, " this was not written by me," he ſhould be told to write another paper, and the document ſhould be collated therewith, and that *of courſe* when the ſcribe is living ; but if he be dead, it ſhould be thoroughly examined by compariſon with a former writing produced. Whether alive or dead, it is proper to collate it with his handwriting in a former document. This has been ſufficiently diſcuſſed.

If by chance the writing be *carried* elſewhere before the debt be diſcharged, what ſhall be done? To this incidental queſtion YÁJNYAWALCYA replies:

CCXCI.

YÁJNYAWALCYA:—If the inſtrument be *inacceſſible* in another country, or written in a wrong form, or deſtroyed, or illegible, or ſtolen, or gnawed *by vermin*, or burned, or torn, the debtor muſt give another writing.

If the inſtrument exiſt in another country, whence it cannot be brought back, the debtor muſt give another writing. The recital ſhould be thus: " having received a loan of ſuch a ſum, I gave a writing, and now give another document, becauſe that has been carried to another country."

" Written in a wrong form ;" being at firſt written, through ignorance,

ignorance, in a form contrary to law. "Deſtroyed;" by moiſture or the like. "Illegible;" from the defect of the ink, and ſo forth. "Stolen," by robbers or others. "Gnawed," by inſects or any vermin. "Torn," rent in two. *In theſe caſes* another writing ſhould be executed with the conſent of both parties.
The *Dípacalicá.*

A deciſion ſhould be grounded on any one of the proofs mentioned; namely, evidence of the handwriting, and the reſt; or on two or more arguments. If no ſuch proof can be adduced, oath or ordeal muſt determine the conteſt. Conſequently, on failure of documents, when a deciſion cannot be grounded on written evidence or ſimilar proof, the legiſlator admits the oath of the party. The *Dípacalicá.*

And this muſt alſo be underſtood in the caſe of a bill of ſale, or the like; for it is mentioned generally. All this is ordained when the debtor is living; but, if the debtor have deceaſed, what ſhall be done? To this VRĬHASPATI replies (CXXI).

"Has abſconded" (CXXI 2); is abſolutely not to be found, having abſconded or the like. "Notice having been given to the paternal or maternal kinſmen of the debtor, the creditor may ſeize and obtain his due" (CXXI 3; the laſt portion of which text is read, *tad bandhu jnyáti viditam pratigrĭhann avápnuyát*, notice having been given for the aſſurance of that debtor's relations). The *Retnácara.*

But MISRA reads, *tad dhanam jnyátrĭ viditam pragrĭhan náparádhnuyát*, and thus comments on it; 'the creditor, recovering his due by violence or the like, ſhall not be puniſhed by the king.'

"He muſt relinquiſh the balance" (CXXI 2); he muſt deliver it to the heir of the debtor, or to the king; but the property of *Bráhmanas*, on failure of heirs, he muſt caſt into the waters. Theſe texts are otherwiſe expounded as relating to the title of Redemption of Pledges.

But if the creditor be dead, to whom ſhould the debt be delivered? NAREDA (CCXXXI) replies to this queſtion. That text has been already expounded.

"Thoſe who are diſtant" (CCXXXI); kinſmen, other than his offspring, and near kinſmen of the ſame race, but allied to his father or mother. "A creditor of the prieſtly claſs;" illuſtrative of every claſs. The *Retnácara.*

It

It ſhould be here noticed, that the precept for caſting the ſum into the waters regards the prieſtly claſs only; the king may take the property of others on failure of all heirs. If there be any legal heir, why ſhould he caſt it into the waters? In this expoſition MISRA and others concur. "Beſtow it on prieſts" (CCXXX); on learned and worthy prieſts: for it coincides with the text of DÉVALA above quoted.

An obſervation may be here made. If a man became ſurety for a debtor from whom he has received a pledge, ſhould that ſurety die leaving no ſon, in whoſe poſſeſſion ought the pledge to remain? To this queſtion it is anſwered, if the receipt of the pledge by the ſurety be proved, it ſhall be delivered to the creditor; for the debtor was not truſted: and from that day the debt becomes one ſecured by a pledge; it ſhall therefore only bear intereſt at the rate of an eightieth part or the like. This and other points may be argued.

YÁJNYAWALCYA:—If a huſband, in a famine, or for the performance of ſome indiſpenſable duty, or during extreme illneſs, or while a creditor keeps him confined, ſhould appropriate the wealth of his wife, he ſhall never, *while his diſtreſs laſts*, be compelled to reſtore it.

"Or while a creditor keeps him confined," while a creditor or other perſon becomes the occaſion of his nouriſhment being ſuſpended or the like. The *Dípacalicá*.

From the mention of "huſband" in this text, it follows, that the wealth of a woman, borrowed by any other perſon, muſt neceſſarily be repaid*.

The twenty topicks, compriſed under the forenſick title of Loans and Payment, have been thus briefly diſcuſſed.

* Some remarks on the ſubject of pledges, which were ſubjoined in this place, I have transferred to the chapter on Pledges.

BOOK II.

ON

DEPOSITS, SALE WITHOUT OWNERSHIP, CONCERNS AMONG PARTNERS,

AND

SUBTRACTION OF WHAT HAS BEEN GIVEN.

CHAP. I.

ON

DEPOSITS

AND OTHER BAILMENTS.

SECT. I.—*On the several Sorts of Bailment.*

I.

VRĬHASPATI :—Under the title of Loans and Payment, the law has been declared, from the delivery of the loan, and so forth, to the recovery of the debt: Now hear the complete rules for Deposits *and other bailments.*

"Delivery," or advance; delivery to a borrower asking a loan in these words, "lend me money:" of course *it means* the delivery

livery of money *thus* becoming a loan. Beginning with this, and ending with compulſory payment, that is, with the recovery of the debt, the title of law, called Loans and Payment, has been promulged. The proper order of the ſubject is thus imitated; for MENU, enumerating the eighteen titles of law, has firſt mentioned Loans, and next Depoſits: the pupil, therefore, is firſt required to ſtudy the law of Loans, and next that of Depoſits, becauſe it is next in order.

II.

MENU:—Of thoſe *titles*, the firſt is debt on loans for conſumption; *the ſecond*, depoſits, and loans for uſe; *the third*, ſale without ownerſhip; *the fourth*, concerns among partners; *the fifth*, ſubtraction of what has been given;

2. *The ſixth*, non-payment of wages or hire; *the ſeventh*, non-performance of agreement; *the eighth*, reſciſſion of ſale and purchaſe; *the ninth*, diſputes between maſter and ſervant;

3. *The tenth*, conteſts on boundaries; *the eleventh*, aſſault and ſlander; *the twelfth*, larceny; *the thirteenth*, robbery and other violence; *the fourteenth*, adultery;

4. *The fifteenth*, altercation between man and wife, and their ſeveral duties; *the ſixteenth*, the law of inheritance; *the ſeventeenth* and *eighteenth*, gaming with dice and with living creatures: theſe eighteen titles of law are ſettled as the groundwork of all judicial procedure in this world.

Among theſe eighteen titles of law, that of Loans and Payment is firſt diſcuſſed in this work. Its definition has been propounded by NÁREDA (Book I, v. 1). Bailment, conſiſting in the intruſting of one's own property with another perſon; ſale made by one who is not owner of the effects ſold; the mode of proceed-

ing among aſſociated traders and the like ; the reſumption of effects giving away, believing of the donee an improper object of donation, or through anger or the like ; non-payment of wages, or of the hire of a ſervant or labourer ; breach of contract ; reſciſſion of purchaſe, and reſciſſion of ſale ; diſputes between maſter and herdſman ; conteſts on the boundaries of towns and the like ; ſlander, or contumelious invective, and ſo forth ; aſſault or battery, and ſimilar injuries ; larceny, or private ſtealing ; robbery, or violent ſeizure of property ; adultery, or intercourſe of a woman with a man other *than her huſband ;* duties of a huſband with his wife ; diſtribution of the paternal eſtate or the like ; " gaming with dice," that is, play ; " gaming with living creatures," or fights of birds, rams, and other living creatures : theſe eighteen titles of law are the ground-work of judicial procedure. Challenges, or gaming with living creatures, being diſtinguiſhed from other modes of gaming, the number of eighteen is completed. CULLÚCABHATTA.

Loans have been diſcuſſed ; ſale without ownerſhip ſhall be ſubſequently conſidered. What is ordained, is a " precept or rule " which muſt be fulfilled (I). Conſequently, the meaning of the phraſe (I) is, " hear, that is, attend to, what is to be done in reſpect of bailments ; namely, the form of making a depoſit, and ſo forth, unto the form of receiving it." NÁREDA defines a depoſit :

III.

NÁREDA :—Where a man bails any of his effects to another, in whom he has confidence, and from whom he has no doubt of receiving his property again, it is a depoſit, which the wiſe call *nihcſhépa.*

" Where " is here employed in the ſenſe of ' when ;' one ſuffix being ſubſtituted for another. Or elſe, " where " has the termination of the ſeventh caſe, denoting ſubject ; conſequently that in reſpect of which the agent, entertaining no doubts of receiving his property again, performs acts which make it a depoſit, or an act amounting to bailment, is a depoſit : or the ſettled rule concerning depoſits is a title of judicial procedure.

 Is

Is the ſenſe of the word grounded jointly on its uſe and derivation, or on its acceptation only? The latter is intimated by Cullúcabhatta, who thus explains the word, 'the intruſting of one's own property to another perſon:' and the author of the *Mitácſhará* ſays, '*nihcſhépa* is the committing of property to *another* in *his* preſence.' According to this opinion, it has a ſecondary ſenſe, namely that of *the thing* depoſited, in the expreſſion "make a depoſit*" (XI): for a derivative of this form may be admitted in a paſſive ſenſe. When a man bails his own property, it is a bailment of his own property, or the property is a bailment. According to the opinion wherein it is maintained that the word means the thing bailed, the ſenſe is the ſame in both texts: herein many authors concur. Conſequently *nihcſhépa* denotes generally both the delivery of a man's own effects to another without annulling his own property in them, and the effects ſo delivered.

"In whom he has confidence," is mentioned deſcriptively, and not as denoted by the term; for a man will not intruſt his property to another without confidence in him. "Any of his effects;" any of the effects in his power: therefore, when the king commits conteſted property to another perſon, it is a depoſit.

Does not the ſenſe aſcribed to *nihcſhépa* comprehend a pledge, or the delivery of a pledge? It may be ſo: a depoſit does ariſe in a pledge and the like. But when it is queſtioned whether a depoſit or a pledge ſhall prevail, depoſit, different from a pledge, is intended; in like manner as one name of kine may denote cattle of that ſort, and a ſynonymous term in the ſame ſentence may intend cows only: or the objection may be removed by ſaying, "without contracting his own dominion over them," inſtead of ſaying, "without annulling his own property in them."

Upanid'hi is a diſtinct ſort of depoſit, of which, Cullúcabhatta ſays, it is a diſtinction ſimilar to that of religious mendicant and *Brahmána*: what the diſtinction is, Yájnyawalcya declares:

IV.

Yájnyawalcya:—A thing encloſed *under ſeal* in

* Literally, "bail a depoſit."

in a box or caſket, which the owner delivers into the hand of another, without mentioning *its kind, form, or quantity*, is called an *upanid'hi*, and muſt be reſtored in the ſame condition.

A box, caſket, or other thing containing that which is to be bailed; a thing contained therein under ſeal, which the owner with confidence delivers into the hands of another for ſafe cuſtody, without mentioning its kind, form, quantity, or the like, is called an *upanid'hi*. The *Mitácſhará*.

" A box," or veſſel with a lid and ſo forth, containing the thing bailed. The *Retnácara*.

'The thing bailed' ſignifies the thing which becomes a depoſit. " That which the owner ſo delivers:" 'thing' muſt be ſupplied as the ſubject, *to which the word " that " is joined adjectively*. " A box or caſket;" a cloſed veſſel, or the like, containing the depoſit. The *Dípacalicá*.

The word 'depoſit' is there conſidered as ſignifying the chattel bailed. BHAVADÉVA cites the *Sárja* *, 'A *certain* veſſel is called box or caſket.' " Such a depoſit is called *upanid'hi;*" *for* a bailment under ſeal is a depoſit. Open and ſealed depoſits are ſimilar, *being bailments*. So JATÁD'HARA. From *upanid'hi* is derived *aupanid'hica*, the word uſed in the text; and it ſignifies 'belonging to a ſealed depoſit.'

V.

NÁREDA, cited in the *Mitácſhará*:—When a thing is depoſited, under ſeal, without mentioning its quantity; if its kind and form be unknown, it is conſidered as an *upanid'hi*: but the wiſe call a ſpecified depoſit *nihcſhépa*.

" If its kind and form be unknown;" if the depoſitary know not whether it be gold, or ſilver, or what. " Under ſeal;" ſecured by a private knot to prevent its being taken by another perſon,

* A dictionary ſo called.

fon, or fecured by the impreffion of a feal on which particular letters are engraved ; when a thing is fo depofited, the bailment of it is *upanid'hi*. A fpecified depofit (or the bailment of a thing, of which the quantity, kind, and form are mentioned,) the wife call *nihcſhépa ;* and the conftruction is the fame if depofit be referred to the thing depofited.

Since the text of Náreda clearly fhows a diftinction between open and fealed depofits, the diftinction fhould be called evident: why does Cullúcabhatta compare this diftinction to that between *Bráhmana* and mendicant? In the text of Cátyáyana (XXXII), fealed depofit is comprehended in the word *nihcſhépa ;* and Náreda, after premifing the general fenfe of this term, propounds a diftinction in a fubfequent text: confequently it has both a general and a particular fenfe, as twice-born denotes the *Bráhmana*, *Cſhatriya* and *Vaiſya* collectively, and alfo the *Bráhmana* feparately: and further, Vrĭhaspati, premifing *nihcſhépa* (I), explains *nyáſa* feparately from it, but not feparately from fealed depofits.

VI.

Vrĭhaspati:—When any thing is carried and placed *in the houſe or on the ground of another*, *notice being given to him* by the owner, who has fear of the king, or of robbers and the like, or who wifhes to deceive his heirs, it is called *nyàſa*.

According to the glofs of Chandéswara. "Notice being given to him," is fupplied in the text, to exclude a thing depofited without the depofitary's knowledge: there is no fault on his part if a thing depofited without his knowledge be loft. Why fhould a man place any of his own effects on another's ground? The text affigns a motive, "fear of the king," &c.

If it be faid, this is the meaning of *nyáſa*, not of *upanid'hi ;* the anfwer is, in the verfe immediately following he mentions what is in fact denoted by the laft-mentioned term.

VII.

VII.

VRĬHASPATI :—*And when a thing* enclosed in a box *is placed*, without mentioning its kind, form or quantity, and without showing the thing.

"*Placed*" is brought forward from the preceding text: it follows, that this describes *nyása*, for no other name is mentioned. Consequently, *nyása*, like *nihcshépa*, has both a general and a particular sense. So in the text of MENU (XL), *nyása* comprehends both open and sealed deposits; and it is constantly used by VRĬHASPATI in describing a depositary. According to the *Mitácshará* and the rest, *nyása* is the delivery of a thing into the hands of a person belonging to the depositary's family, with these directions; "give this to your master:" and such a delivery occurs both in the case of open and of sealed deposits; but VRĬHASPATI has expressly declared it in the case of open deposits.

VIII.

CÁTYÁYANA:—A commodity sold, the deposit of one who is absent, a pledge, a bailment for delivery *(anwáhita)*, a loan for use *(yáchita)*, and a deposit for commerce, are considered as *upanid'his*.

"A commodity sold," but for some cause remaining with the vender: so the text is expounded in the *Retnácara*. We hold that the word, taken in a passive sense, means the commodity *sold*; but, if taken in a causal sense, it will intend *the price* of the commodity. "The deposit of one who is absent;" explained in the *Retnácara*, a thing deposited by one who is gone to a foreign country. The meaning is, that a thing which a man who has gone abroad, but, considering the delay of his return, sends home by a messenger or a friend, is the deposit of one who is absent. MISRA and BHAVADEVA explain it, a bailment by another while the owner is absent in a foreign country.

 The

The *Mitâcshará* contains this gloss: 'When a thing is delivered into the hands of some person, and he subsequently delivers it into the hands of another, with these directions, "give this to the owner," it is a bailment for delivery.' The *Dípácalicá* concurs in this explanation: and CHANDÉSWARA holds, that a thing which had been committed to some person, and which is bailed by him to another, with these directions, "you will deliver this to such a man, the owner," is a bailment for delivery. The difference between the two opinions consists in the intervention of one or two persons: and the exposition is founded on the following text:

IX.

CÁTYÁYANA:—When a thing is bailed with these directions; "deliver this, as by my desire, to such a man, when he shall demand it for his own business," it is called *anwádhi.*

What is bailed with these directions, "deliver this to another other than myself, and different from the owner," is *anwádhi.*
The *Mitácshará* and others.

"Deliver this to the owner," must be supplied; what is bailed with these directions, deliver this to another other than myself, *but who is* "the owner," is *anwádhi.* The *Retnácara.*

Both senses may be received; or even if the text be limited to one sense, the other may be assumed, from the expression "and the like," in the text of YÁJNYAWALCYA (X). A pledge transferred, as mentioned by MISRA and BHAVADÉVA, must also be included. A pledge received from another person, and delivered as a pawn to a creditor, on receiving a loan from him, is named a pledge transferred. We do not find whence the author of the *Mitácshará* has said, in explaining *nyása*, that the difference consists in the delivery of the thing into the hands of a person belonging to the depositary's family: for the difference is, that *nyása* supposes one person; but a bailment for delivery supposes two.

How has CHANDÉSWARA distinguished *nyása*, *nihcshépa*, and *anwáhita*? It cannot be said that he holds *nyása* and *anwáhita* to

to be the ſame: for that expoſition could not apply to the text of YAJNYAWALCYA, where both are ſeparately mentioned.

X.

YÁJNYAWALCYA:—This is the rule reſpecting a loan for uſe *(yáchita)*, a depoſit for delivery *(anwàhita)*, a depoſit unſpecified *(nyàſa)*, and an open bailment *(nihcſhépa)*, and the like.

" When he ſhall demand it for his own buſineſs " (IX). By this expreſſion is meant, if any perſon require a thing, and it be ſent by a meſſenger, it is *anwàhita*. Some hold, becauſe the word " owner " is conſtantly employed in the *Mitácſhará* and other works, that the diſtinction is as follows: effects and the like, previouſly depoſited, which are delivered to the owner through the medium of another perſon, are *anwàhita;* and what is bailed by the owner, through the medium of another, is *nyàſa.* But the word " owner " is not found in the text of any Sage, to ground upon it the opinion of theſe authors. HELÁYUDHA, reading " when he ſhall demand it for this purpoſe," thus expounds the text: ' when a thing is bailed with theſe directions, " deliver this to ſuch a man, when he ſhall demand it for this purpoſe," it is called a depoſit for delivery *(anwàdhi)*.' The meaning is, that if ſome perſon, to oblige another, intruſt any chattel employed at nuptials to ſome other perſon, with theſe directions, " when DÉVADATTA requires this to uſe it at nuptials or the like, deliver it to him," that chattel is a depoſit for delivery *(anwàdhi)*. Or if a man himſelf, or by a meſſenger, demand payment of a debt, and the debtor, after two or three days, deliver the amount of it to ſome other perſon, it is a depoſit for delivery *(anwàdhi)*. According to CULLÚCABHATTA and others, the word *anwàdhi* is either in a ſecondary ſenſe, or is derived in a paſſive form. According to others, it is derived in a paſſive form, with a ſenſe founded jointly on uſe and derivation.

' Clothes, ornaments and the like, requeſted and obtained,

for

for a marriage or other occafion of rejoicing, are loans for ufe' (VIII). The *Mitácſhará.*

In this CHANDÉSWARA and 'SÚLAPÁNI concur. The *Dípacalicá expreſſes;* " they are confidered as *upanid'hi*" (VIII), which is called *nyáſa* by VRĬHASPATI. The meaning is, whatever are the rules in regard to a fealed depofit, from the delivery to the recovery of it, the fame are to be admitted in thefe cafes. This is exprefsly declared in the text quoted from YÁJNYAWALCYA (X): and it is directed by a text which ftands near the definition above quoted.

XI.

NÁREDA :—This very law is enacted in *the cafe of* loans for ufe, depofits for delivery and the like, bailments with an artift, fealed depofits, bailments in the form called *nyáſa*, and mutual trufts,

2. If a man privately receive a fine, or a valuable chattel, the law is the fame in that cafe: thefe are declared to be the fix forts of depofits.

Loans for ufe, and depofits for delivery *(anwáhita)*, have been explained. " And the like," comprehends commodities fold, and fo forth. " Bailments with an artift," explained in the *Retnácara*, things committed to an artift for ornaments and the like; and in the *Mitácſhará*, gold or fimilar *materials* delivered into the hands of a goldfmith or other artift, to be worked into a necklace or other *ornament*. Thefe are comprehended under the words " and the like," in the text of YÁJNYAWALCYA (X). " Sealed depofits," *(upanid'hi)*, already explained. " *Nyáſa*," according to VIJNYÁNESWARA and CHANDÉSWARA, fignifies effects not fhown to the owner of the houfe, but delivered in his abfence to a perfon belonging to the houfe. According to CHANDÉSWARA, the *nyáſa* mentioned by VRĬHASPATI is a form of *nihcſhépa*, and different from this. So many are the forts of depofit *(nihcſhépa)*, fays CHANDÉSWARA; for NÁREDA employs this term in a general fenfe.

CHANDÉSWARA fays, when a man privately receives a fine, as

as there is no evidence of his levying the fine, this very rule *is applicable;* and alſo when a man privately receives a valuable chattel, ſince there is no evidence of the receipt. Conſequently if a man, to expiate a very infamous crime accidentally committed, pay a private fine to the king through a publick officer, and that officer, acting fraudulently, deny the payment of the fine; or if the king's officer aſſert that a fine has been paid, though none have been exacted; this very rule is applicable, namely the rule declared for depoſits: and if a man privately receive back a loan, a depoſit, or the like, which he had himſelf given, and ſubſequently deny the receipt; in that caſe alſo this very rule is applicable. It is aſked, what rule? The want of evidence being mentioned, it follows, that other proof muſt be ſought: therefore, as ordeal is admitted when proof is ſought of a depoſit and the like, ſo, in this caſe, *ordeal is* alſo *admitted.* Such is CHANDÉSWARA's meaning. But it muſt be here conſidered, that ordeal is not mentioned in the text of NÁREDA, and is not intimated by the words "this law." Others ſay the words ("the law is the ſame *in the caſe* of fines, &c.") intend the delivery on demand and ſo forth.

HELÁYUDHA reads, if a man receive a *pógenda*, or adoleſcent; conſequently, according to him, the law reſpecting an infant received with valuable effects, is the ſame with that reſpecting depoſits: it will be mentioned; and the whole of the law, declared under the head of Depoſits, muſt be underſtood. A depoſit may occur in regard to an infant. Thus a child, whoſe father and mother are deceaſed, is bailed by the king or his officer, or by the child's maternal uncle; in this and in other caſes a depoſit ariſes.

How is the law of depoſit *(nihcſhēpa) extended* by the Sage to mediate and unſpecified depoſits *(nyāſa)*, ſince what is denoted by *nihcſhēpa* is found in *nyāſa* and the reſt*? CHANDÉSWARA reconciles it thus; "ſome diſtinction may be ſuppoſed." The diſtinction is mentioned by CULLÚCABHATTA; "like that between *Bráhmana* and mendicant." Or peculiarities, different from thoſe of *nyāſa* and the like, may be ſuppoſed in the definition of *nihcſhēpa*: ſuch as, delivered before witneſſes; different from bailments with artiſts; or the like. There are only ſix ſorts of depoſits;

* *And therefore, what in its nature* belongs *to them, is not* extended *to them.*

deposits; for, in judicial procedure, *nyása* extends to the mere delivery of a chattel for safe custody; and loans for use and deposits for delivery are held one sort: and whatever is included in the words "and the like," is also considered as a single sort of deposit; and the receipt of a fine, or of a valuable chattel, is also admitted as a single sort of bailment. This is the method of the ancients: but according to the author of the *Mitácshará*, who admits the separation of loans for use, deposits for delivery and the like, a mediate and unspecified deposit *(nyása)* and mutual trusts *(pratinyása)* must be considered as a single sort of bailment. A mutual trust may thus arise, according to the author of the *Mitácshará*: "let your jewels or the like remain with me, who reside in a secure place; and let my copper vessels and similar effects, which are coveted by my heirs, remain with you;" on such an agreement, the effects are mutually bailed. In some cases, mutual deposits are made in the form of a sealed bailment; and in the case mentioned, a mutual deposit arises in the form of an open bailment, not a mutual deposit in the form of a mediate bailment *(nyása)*: for the author of the *Mitácshará* holds *nyása* to be a delivery into the hand of a person belonging to the house. But there is no difficulty, for the word *pratinyása* comprehends mutual deposits in other forms.

XII.

VRĬHASPATI:—If a contest arise concerning a deposit privately made, proof by ordeal is directed for both parties:

2. In the case of a deposit for delivery, a loan for use, a bailment with an artist, and a pledge, the same law is enacted; and likewise in the case of a person received under protection.

If the depositary do not acknowledge a deposit privately received; or the bailer, having received back what he had himself deposited, deny the receipt; or if he allege a deposit, though none have been made: in all these cases, ordeal is directed, if there

there be no evidence: this will be explained in its place. CHANDÉSWARA ſays; if a conteſt ariſe concerning a woman, a ſlave and the like, who, from fear or other motive, have ſought protection, and are claimed by their lord, the ſame law is enacted. The meaning is, that, in this caſe alſo, proof by ordeal is directed.

Here all the rules declared in regard to a private depoſit, are to be applied to each caſe, from depoſits for delivery, to perſons received under protection. Therefore, a depoſitary protects what he has received in truſt, like his own property, from water, fire, thieves, and other danger; and likewiſe in the caſe of a perſon received under protection. Wherever the property of one perſon is, for ſome cauſe, delivered into the hands of another for ſafe cuſtody, the rules declared in regard to depoſits are to be applied: therefore, the law of bailments applies to a carriage and the like received on hire; and ſo in the caſe of a perſon delivered by the king or the like into the hands of a guardian, or the produce of a field bailed for ſafe cuſtody by a ſubject. What is the law in reſpect of bailments, which is extended to loans for uſe and the like? It is anſwered, all the rules propounded by Sages, from the delivery to the recovery of a depoſit, muſt be underſtood.

XIII.

MENU:—A ſenſible man ſhould make a depoſit with ſome perſon of high birth, and of good morals, well acquainted with law, habitually veracious, having a large family, wealthy and honeſt.

"Of high birth;" ſprung from an honeſt family. "Of good morals," whoſe conduct is laudable. "Habitually veracious;" in his diſcourſe obſervant of truth. "Having a large family;" having ſons, grandſons, or other family to ſupport. "Honeſt;" plain in his dealings, void of artifice, and ſo forth. With ſuch a perſon ſhould he make a depoſit. Such is the interpretation approved by CULLÚCABHATTA.

"Having a large family," is explained in the *Vivāda Chintāmeni*,

meni, having many kinſmen. In the *Retnâcara*, "a depoſit" is expounded the thing to be bailed. "High birth," and the reſt, are conditions required to obviate all doubt of receiving back the depoſit at a ſubſequent time: for, ſince the abuſe of a depoſit is a heinous crime, a perſon ſprung from a good family will not abuſe it; much leſs a perſon of good morals, and well acquainted with law. A man habitually veracious will not aſſert a falſe-hood. Why ſhould a wealthy man, content with his own wealth, commit a heinous crime by embezzling another's property? An honeſt man cannot commit a fraud. One who has numerous offspring, even though he believe not another world, will not embezzle the property leſt his offspring periſh. Or it may be thus explained; he who has no offspring, being unaided, cannot well protect the depoſit. This agrees with the expoſition of MISRA and others. The deſcription is general, including exemption from other defects. The whole of it muſt be taken as a motive for confidence. So NÁREDA *ſays* (III), "when a man bails any of his effects to another, in whom he has confidence, &c." In this text (XIII) depoſit is uſed in a general ſenſe, comprehending bailments under ſeal and the reſt.

XIV.

VRĬHASPATI:—A man ſhould make a depoſit with due conſideration of the place, of the houſe, of the maſter of the houſe, and of his power, wealth, qualities, veracity, purity, and kindred.

"The place," which contains the thing depoſited; with due conſideration, whether it be ſecure from robbers and the like. Or "the place," may intend the town; conſidering the ſafety of a populous place, where the property is protected by many. "Houſe," or wife, (for the word has both ſenſes;) conſidering whether the wife be virtuous, leſt at her ſuggeſtion the effects be ſecreted; for a man, though virtuouſly diſpoſed, may be inſtigated, through luſt, to ſecrete the effects. Or conſidering whether the "houſe" be built of maſonry, and ſecure from fire. "His power;" is the depoſitary capable of protecting the effects?

fects? "His qualities;" his honesty, his acquaintance with the law, and the like. "His purity;" his avoiding sin, and so forth. "His kindred;" his sons, grandsons, and the rest.

XV.

NÁREDA:—A deposit is declared to be of two sorts, attested and unattested: it must be restored in the condition, *and manner*, in which it was bailed; if altered, there must be a trial by ordeal.

An unattested deposit is made, when a man has the highest confidence in another. If it be asked, why a similar distinction of loans has not been mentioned? it is answered, that, from the nature of a loan, it must either be authenticated by witnesses or by a writing; for excessive confidence is forbidden.

A rule of Ethicks:—Place not confidence in what is unworthy of confidence; nor excessive confidence in what is *even* worthy of confidence*.

The purpose of a deposit made to deceive heirs (VI) would be defeated, if it were publickly known. The selection of a proper person for the confidence reposed in him, at the choice of the owner, must necessarily be admitted, in contradiction to that rule of ethicks, to fulfil the purpose of a deposit: but in the case of a loan, the selection, at the lender's choice, of a suitable person for the confidence reposed, is not proper; *the rule is positive*, like the prohibition against lending to infants. Therefore a loan unattested is not mentioned; and in fact such is the present practice.

A deposit must be restored in the condition *and manner* in which it was bailed (XV). Thus, if it be bailed under a seal, it must be restored under that seal; if it be bailed before witnesses, it must be restored before witnesses; if it be privately bailed, it must be privately restored; so likewise if it be bailed without

* Cited from the *Herivansa*. See Book I, towards the end of the first chapter, p. 28.

without a ſeal, or unatteſted. Again; if more than one make or receive a depoſit, they ſhall jointly recover or reſtore it; and ſimilarly in other circumſtances. The ſame meaning is to be underſtood from the text of YÁJNYAWALCYA (V), and from the following text:

XVI.

MENU:—Whatever thing, and in whatever manner, a perſon ſhall depoſit in the hands of another, the ſame thing, and in the ſame manner, ought to be received back by the owner. as the delivery *was*, ſo *muſt be* the receipt.

As it may be queſtioned whether the latter part be not ſuperfluous, ſince it repeats what preceded, CULLÚCABHATTA ſays, 'it is mentioned as a cauſe: becauſe it is a rule, that as the delivery was, ſo muſt be the receipt; therefore the ſame thing 'ought to be received back in the ſame manner. This directs, 'that, if gold and the like have been bailed under a ſeal, and the 'bailer, breaking the ſeal, ſay, "weigh it, and deliver it to "me," 'he ſhall be amerced.' We do not find how it appears that he ſhall be amerced. If the bailer require it to be weighed, the king ſhould compel him to receive it unweighed: and this is the purport of the text.

Here lawyers, unfettered by ordinances, ſay, two terms ("from him, and by him,") muſt be ſupplied: conſequently the ſenſe of the firſt part of the text would be, whatever thing (gold or the like), and in whatever manner, a perſon ſhall depoſit in the hands of another, the ſame thing, and in the ſame manner, ought to be received by him the depoſitary, from him the bailer. The word delivery is in a paſſive form; as *the thing was* delivered, ſo *it muſt be* received *by the bailee:* and if there be a ſubſequent conteſt reſpecting the quantity, and the king aſk, "why did you receive it unſeen, or unatteſted?" then the firſt part of the text furniſhes an anſwer: "it was *ſo* received under the authority of the law." The intention of the latter part of the text is evident.

MENU clearly declares the form of a mutual depoſit:

XVII.

XVII.

MENU :—But things mutually depoſited ſhould be mutually reſtored, by and to the perſon by and from whom they were received : as the bailment *was*, ſo *ſhould be* the delivery.

DÉVADATTA intruſts a thing to YAJNYADATTA ; and YAJNYADATTA intruſts a thing to DÉVADATTA : having been mutually received, the things ſhould be mutually reſtored. One cannot alone receive his own property, *merely* becauſe he delivered his own property. "As the bailment was, ſo ſhould be the receipt :" a depoſit received with or without atteſtation ſhould be ſo reſtored. If one ſay, "let my chattel remain with thee," and the other alſo ſay, "let my chattel remain with thee ;" it is a mutual delivery : if one ſay, "let thy chattel remain with me, and my chattel with thee," it is a mutual receipt and delivery : and if ſome perſon, ſeeing that another is unable to protect his property from robbers, and intending to confer a favour, ſay, "let thy chattel remain with me ;" and if he, deſirous of returning the favour, ſay, "thou haſt many chattels of ſmall value, let them remain with me," it is a mutual receipt. Or the diſtinction between mutual receipt and mutual delivery may be explained in any other manner. Thus ſome expound the text : but CULLÚCABHATTA explains it by a depoſit privately made ; "a thing privately depoſited," &c. A delivery mutually atteſted, that is, not atteſted by others. "By whom it was received ;" privately received by the depoſitary. "Mutually reſtored ;" privately reſtored *to the bailer :* to reſtore it before witneſſes ſhould not be required. "As the bailment was, ſo ſhould be the delivery," is mentioned as the reaſon. "Should be reſtored ;" this rule regards the depoſitary ; "ought to be received," &c. (XVI) regards the bailer : conſequently there is no *vain* repetition.

XVIII.

VRĬHASPATI, quoted in the *Retnácara:*—The very thing

thing bailed must be restored to the very man who bailed it, in the very manner in which it was bailed: it must not be delivered to his heir apparent or presumptive.

If bailed before witnesses, it must be restored before witnesses; and without exceeding the period for which it was bailed, if a period were stipulated: and, in the case of mutual deposits, the receipt must be mutual. The *Retnácara* interprets "his heir," &c. his son and the rest.

XIX.

VRĬHASPATI:—A deposit is declared to be of two sorts, bailed before witnesses, and privately bailed; it must be preserved as *carefully as* a son *is cherished; for* it would be lost by neglect.

2. The merit of one who preserves a deposit, or protects a dependant*, is the same with the merit of him who gives golden vessels or clothes.

3. As the crime of a woman who injures her husband, or of a man who kills his son or his friend, such is the crime of depositaries, if the thing deposited be consumed, or spoiled by gross negligence.

4. A *prudent* man would not receive a deposit; but to destroy it, when received, is infamous: he must keep it with care, and restore it on a single demand.

For a written contract of bailment there is no authority in the law, nor in judicial practice: but doubts may be now obviated by making such a contract. A deposit *must be preserved* from robbers, from vermin, from decay and the like; if no care be taken,

* Or a person received under protection (XII).

taken, and the thing be never inſpected, it may decay in the ground; or be ſtolen by neighbouring thieves entering the houſe; or, if it be ſmall, it may be carried away by rats: in theſe and ſimilar modes it may be deſtroyed. Why ſhould a man labour to preſerve another's property? The text furniſhes a motive (XIX 2). But he who is not deſirous of religious merit, will not preſerve it: therefore it directs, (XIX 3,) that the ſinful taint of a huſband's murder, and ſimilar crimes, is contracted by aliening a depoſit without permiſſion, and by neglecting to preſerve it. The preſervation of it is indiſpenſable; therefore, a depoſit ſhould not be received by a perſon who is not diſpoſed to an act of duty or amity.

Here it muſt be noticed, that when the property of another is bailed by ſlaves, ſtrangers, or robbers, to deceive the owner, that depoſit ought not to be received; for uſage *forbids it*: and the depoſitary might be ſuſpected of theft, ſhould he be unable to ſhow that the bailer actually made him receive the depoſit. If among undivided brethren one parcener depoſit joint property with ſome other perſon, to deceive his coheirs, the depoſitary is cenſured.

" A man ſhould not receive a depoſit" (XX 4), becauſe it is a crime in the depoſitary, if the depoſit be conſumed. " But, to deſtroy it, is infamous:" the particle may be taken in a connective ſenſe; and the meaning will be, the conſumption and the deſtruction of a depoſit are infamous. " He muſt reſtore it on a ſingle demand," if no period have been ſtipulated; but at the expiration of the period, if it were bailed for a ſtipulated time; or the bailer may receive it back ſooner, with the depoſitary's conſent.

XX.

MENU:—A depoſit, whether ſealed up or not, ſhould never be re-delivered, while the depoſitor is alive, to his heir apparent or preſumptive: both ſorts of depoſits are loſt if he die, but not unleſs he die*.

'They

* The latter part of the text has been otherwiſe tranſlated by Sir WILLIAM JONES: " both ſorts of depoſits, indeed, are extinct, *or cannot be demanded by*

'They ſhould not be re-delivered to the ſon, the brother, or other
'perſon who would be entitled to them after the bailer. To
'aſſign a reaſon, it is ſaid, "both are loſt &c." that is, becauſe
'both are loſt, if they are delivered to a ſon or other heir, and he
'dies without delivering them to the owner. It follows that, *in*
'*ſuch a caſe*, they ſhall be made good by the depoſitary. But
'they are not loſt, unleſs he die: they will be delivered by the ſon
'or other heir to the depoſitor; they are not to be made good by
'the depoſitary. Conſequently, if they be delivered to the heir,
'there is danger that the heir may die, and that the depoſit muſt
'be made good; therefore, neither ſort of depoſit ſhould ever be
'redelivered to the heir.' CULLÚCABHATTA.

He ſuppoſes this caſe; the heir dies after receiving back the depoſit, and long afterwards the owner ſays, "the depoſit was not delivered to my heir, but remains with you, give it me." It cannot be ſaid, that, ſince the ſame may occur in the caſe of a debt, the delivery to a ſon and the like is improper even in that caſe; and therefore the text, which directs payment to one of the family in default of the lender, is unmeaning. In that caſe, the delivery may be aſcertained by atteſtation. It cannot be ſaid that here alſo it may be ſo aſcertained; for the atteſted recovery of an unatteſted depoſit is forbidden (XVII): and, even in the caſe of ſuch redelivery of an atteſted depoſit, the depoſitor's claim remains. Thus *the owner might ſay*, "on what conſideration did you relinquiſh the depoſit in my abſence?" but, in the caſe of a debt, the creditor cannot ſay ſo. The text is not unmeaning, for there is a purpoſe in making the payment; namely, the recovery of a pledge when intereſt has ceaſed; but, in the caſe of a loan unſecured by a pledge, upon which the higheſt intereſt has been received, the debtor may not repay it to the ſon or the like. In fact, there is no offence in repaying it to the ſon or other repreſentative, on the conſideration, that body is not immortal, and to remove the ſin of debt; for the debtor incurred the debt under the preſſure of indigence. But, under the authority of the text, a depoſit, voluntarily received, muſt be kept until the depoſitor return.

Again;

the heir, if the depoſitor die, *in that caſe;* but not unleſs he die: *for, ſhould the heir apparent keep them, the depoſitor himſelf may ſue the bailee.*" I alter the tranſlation in conformity with the commentary.

Again; this ſhould now be remarked: we perceive no offence in re-delivering a depoſit to the heirs of the depoſitor before witneſſes, under the apprehenſion of ill treatment from thoſe heirs, *even* before the expiration of the period for which it was depoſited.

If a ſon or other repreſentative ſhould die after receiving back the depoſit while the depoſitor was alive, and it have not reached the depoſitor, having been expended by the heir; and this be proved by witneſſes and the like; muſt the depoſitary make good the depoſit or not? To this it is anſwered, that, according to CULLÚCABHATTA, it ſhall not be made good: for he ſays, both ſorts of depoſits ſhall not be made good, if there be no doubt; and even ſometimes, though the heir be not dead, they are not loſt. Thus, if the heir be living, the depoſitary is juſtified by proof of the delivery to the heir: this is clearly expreſſed. What difference is there, if the heir be dead? After the death of the heir there may be ſuſpicion, if proof be deficient. It ſhould be remarked on the term "heir apparent or preſumptive" (*pratyanantara* V. xx), that the word *prati* denotes ſimilarity, as in the example "ABHIMANYU like ARJUNA." The word *anantara* ſignifies proximate without an interval. Conſequently a depoſit can be legally received back by the neareſt heir alone.

But CHANDÉSWARA, without employing the word 'even,' ſays: ſometimes the depoſitor ſhall recover it, though the heir be not dead: it follows, that ſometimes the depoſit is extinct, though the heir be not dead; that is, when the heir diſſipates it without permiſſion. Conſequently, even in that caſe, it muſt neceſſarily be made good by the depoſitary; otherwiſe, the expreſſion "but not unleſs he die," would be unmeaning. In ſuch a caſe it muſt certainly be made good. This is CHANDÉWARA's meaning, and is proper; for, a ſon having no dominion over the paternal wealth while the father lives, his receipt of the thing depoſited is not valid; as is declared by HÁRÍTA (Book V, v. 8). Thus the ſon's receipt of it is ſimilar to a ſtranger's receipt. But when it is any-how received by the owner, the delivery becomes valid. Conſequently, if it any-how fail of reaching the owner, it muſt be made good. But if the ſon conduct all the affairs while the father lives, there is no offence in a re-delivery to him. However, a depoſit, expreſsly bailed to deceive a ſon, muſt on no account be delivered to that ſon while the father lives, without his

 directions:

directions: but, with his permiſſion, there is no offence in re-delivering the depoſit to the ſon; and, after the death of the depoſitor, there is no harm in the re-delivery of it to the heir.

XXI.

MENU:—But if a depoſitary, by his own free act, ſhall deliver a depoſit to the heir of a deceaſed bailer, he muſt not be haraſſed either by the king or by the kinſmen *of the deceaſed.*

The expreſſion "by his own free act," implies, that while the bailer lives, it ſhall not be delivered, though demanded by the heir; but after the bailer's death, it ſhould be delivered, even without a demand. CHANDÉSWARA.

He muſt not be haraſſed by the king, on the ground of its being the bailer's property. CULLÚCABHATTA.

"By the kinſmen" of the bailer; by his father's ſiſter's ſons, his mother's ſiſter's ſons, and the reſt. The meaning is, that after the bailer's death, his ſons, or other heirs, have dominion over the effects depoſited; and if a ſon be living, it muſt not be delivered to a grandſon whoſe father is alive.

If a depoſit, though carefully kept, be taken away by thieves or the like, there is no fault in the depoſitary.

XXII.

NÁREDA:—What is loſt, together with the property of the bailee, is loſt to the bailer; ſo if it be loſt by the act of GOD or of the king, unleſs there was a fraudulent act on the part of the depoſitary.

"Loſt, together with the property of the bailee;" meaning *generally*, if there be no fraudulent act on the part of the depoſitary. Thus, if the depoſit only be loſt, and not even a trifle belonging to the depoſitary, yet, if it were kept with care, and conſumed by time only, there is no fault in him. If it be loſt by

by the act of God (broken by a wall falling down), or be loſt by the act of the king (plundered by the forces of a foreign king; or oppreſſively ſold, or the like, by the king of the country;) then, as in the caſe of conſumption by time, there is no fault in the depoſitary. But he is criminal if fraudulently he place the thing depoſited near an old wall or the like, while he places his own property elſewhere; or if, concealing his own property, he ſhow the depoſit to the king. The principle of this rule is, that the depoſitary muſt make good the depoſit if he be in fault, and not unleſs he be in fault. But if the depoſitary ſay it is loſt, though it be not loſt; then, on failure of evidence, it ſhall be tried by ordeal.

XXIII.

Vrĭhaspati:—If it be deſtroyed by the act of God or of the king, together with the goods of the bailee, there is no fault in him.

" Together with the goods of the bailee;" to denote that there is no fraudulent act on the part of the depoſitary. It is to be remembered, that if he deliver the depoſit to the king, together with his own goods, without mentioning that it belongs to another, even in that caſe the depoſitary is criminal: and if it were kept with care, then, even though the depoſit alone be ſeized by thieves or the like, there is no fault in the depoſitary. Herein the *Retnácara* and the reſt concur.

XXIV.

Cátyáyana:—If a thing depoſited be loſt, together with the goods of the bailee, though not by the act of God or the king, it is declared to be loſt to the bailer.

The loſs of the bailee's goods, every where mentioned, is intended as a *general* exception to all fault in the bailee. It is therefore inferred, that even if the depoſit alone be loſt, but with-

out any fault in the depoſitary, it ſhall not be made good; but if loſt by a fraudulent act on the part of the depoſitary, it muſt be made good. The *Retnácara.*

XXV.

YÁJNYAWALCYA:—But he ſhall not be compelled to replace that *depoſit* loſt by the act of GOD or the king, or ſeized by robbers.

He ſhall not be compelled to make good a ſealed depoſit, loſt with the veſſel in which it was contained, (being ſeized by the king, or waſhed away by water or the like, or ſtolen by thieves,) if there be no fraudulent act on his part. The *Mitácſharā.*

A ſimilar expoſition is delivered by 'SÚLAPÁNI, who reads the text *daivata*, inſtead of *daivica (but the ſenſe is unchanged).* If it be loſt by a fraudulent act on the part of the depoſitary, or by his fault, he ſhall be compelled to make good the depoſit, and ſhall be amerced. This will be declared. A diſtinction is mentioned in the following text:

XXVI.

MENU:—If a depoſit be ſeized by thieves, *or deſtroyed by vermin,* or waſhed away by water, or conſumed by fire, the bailee ſhall not be compelled to make it good, unleſs he took part of it himſelf.

If a perſon receiving a depoſit conſume a part of it, and afterwards the remainder be ſeized by thieves or the like; ſome hold, that, under the authority of the text, the depoſitary ſhall in that caſe make good the whole depoſit. But others ſay, that the depoſitary ſhall make good the whole if he accidentally receive any part of the depoſit which has been ſeized by thieves or the like. This is denied, becauſe it is not fit that the loſs ſhould be his, without any fault in him: but if he do not make it known that he has received the thing, he is criminal, and ſhall make good the depoſit, as in the preceding caſe. Since he is criminal, if he conſume

consume any part of it, whether before or after it was seized by thieves or the like, he shall make good the whole deposit. This is the full meaning of the text. In that case he shall make it good with interest, if he consume a part of the deposit; but without interest, if he merely omit to make it known that he has received a part of it.

If he take a part of it, and deposit the remainder elsewhere; or neglect it, thinking that he will not be liable to make good the whole; in that case, the whole must be made good. MISRA.

When the deposit is lost by the depositary's fault, he shall make it good; but when it is lost by the fault of the person through whom it was deposited, then this person shall make it good.

XXVII.

CÁTYÁYANA:—What is lost by the fault of the depositary, is lost to him.

2. He by whose fault any thing is lost or taken away, shall be compelled to make it good, with interest, unless *it be lost* by the act of GOD or the king.

But even if the depositary have shown *a probable* cause of its destruction, if the thing deposited appear to have been lost by any fault on his part, other than neglect, he shall make it good.

The *Retnácara.*

A man addressing some person, says, "let my property remain in deposit with thee;" he replies, "my house is infested by rats and other vermin, place it not there;" the other rejoins, "be it so, what can vermin do?" and he accordingly deposits the goods. It follows, that in that case there is no fault in the depositary, if it be lost by neglect. But if he place it out of the house, or in another place, and in consequence it be seized by thieves, or spoiled by rain; or if, from anger or some other motive, he cast it of his own accord into the water; or if he deliver it to the king, who causes his household effects to be sold on account of some fault; if the thing deposited be lost by these or other faults on

on the part of the depofitary, he fhall make it good. This is intended by the firft hemiftich (XXVII).

When, addreffing fome perfon, a man fays, "bail this grain to DÉVADATTA;" and he, going to DÉVADATTA, fays, "this grain is bailed to thee, by CHAITRA, through me;" and DÉVADATTA anfwers, "place it in the houfe;" and he places the grain in the middle of the houfe, but in a damp fpot; and the grain is deftroyed by the damp: in this cafe, the grain fhall be recovered from the meffenger. This is intended by the fecond verfe (XXII 2): for, otherwife, it would be fuperfluous. Thus, if the depofitary be underftood in the words "he by whofe fault," the fenfe is the fame as in the preceding hemiftich; and if the depofitor be underftood, then the receiver and giver would be the fame; it is therefore properly applied to an intermediate perfon: and, according to the *Dípacalicá*, when the depofit is deftroyed by the fault of the perfon who caufes it to be placed, he fhall make it good. But when the owner bails effects notwithftanding the depofitary's objections, and thofe effects, being neglected, are loft, but without any other fault on the part of the depofitary, in that cafe no blame fhall be imputed to the depofitary.

XXVIII.

CÁTYÁYANA:—If the depofitor, though apprifed of its danger, *neverthelefs* bail the thing, and it be deftroyed by any injury, the depofitary fhall not be compelled to make it good.

If the depofitor know the lofs of his effects to be probable, (having been forewarned by the depofitary, that the king would force the houfe, and therefore he ought not to place his effects there,) if he neverthelefs bail thofe effects, there is no fault in the depofitary, fhould they be loft by any caufe, whether it be the occurrence which was previoufly apprehended, or *fome accident* which was not apprehended. In this expofition, the *Retnácara* and the reft concur.

Is this text applicable or not, when, in fuch a cafe, the depofit is loft by negligence? Here it is faid, that the text does apply in

in the caſe of a loſs occaſioned *merely* by negligence, without any other fault: for another text (XXIV) *already* ſhows, that there is no fault in the bailee, if the depoſit be loſt without neglect or other *fault*; and it is declared, that the depoſitary is criminal, if it be loſt by his fault. It cannot be ſaid that the former text (XXIV) intends the caſe of a depoſit loſt, together with the goods of the bailee; but that this text (XXVIII) intends a depoſit conſumed by time, though not neglected, and without a concurrent loſs of the bailee's own effects. For, according to CHANDÉSWARA, it is not limited to the caſe of the bailee's goods being loſt with the depoſit; 'the loſs of his goods, every where mentioned, is intended as an exception to other faults alſo;' and the text (XXIV) is taken only in the ſenſe *ſo* inferred: this correſponds with what CHANDÉSWARA has ſaid in explaining another text (XXVII).

XXIX.

GÓTAMA:—The neceſſity of making good a depoſit, a thing bailed for delivery to a third perſon, a pledge, a thing borrowed or hired, and the like, if deſtroyed by the fault of the bailee, ſhall not fall upon any of his heirs, if they were free from blame; but it falls on the bailee, by whoſe fault the thing is deſtroyed.

"Depoſit," &c. in a general ſenſe. Whatever has been mentioned by any Sage or Author as partaking of the nature of a depoſit, muſt be underſtood. "Heirs;" ſons, grandſons, and the reſt. "Free from blame;" not in fault. Conſequently, ſhould the depoſitary die, the owner recovers the thing depoſited from the heirs of the bailee, *if it be loſt by their fault*: thus is the law ſettled. But if it be loſt without any fault, by accident or the like, he does not recover it from the heirs. This expoſition is founded on the gloſs of the *Retnácara*.

Is not this gloſs ("heirs;" ſons, grandſons, and the reſt) unmeaning? for the depoſitary himſelf is free from blame, if the depoſit be loſt without any fault on his part. It muſt be underſtood,

ſtood, that this text is intended to obviate the doubt, whether, in caſe of the depoſitary dying after having occaſioned the loſs of the depoſit by his own fault, the owner may recover it from his ſons, becauſe it was loſt by their father's fault: but if it be loſt by their fault, it muſt be made good by them (XXVII 2).

SECT. II.—*On the Recovery of a Deposit.*

It has been ſaid, that *the depoſitary* ſhall be compelled to make good *a depoſit deſtroyed by his fault;* ſhall he be compelled to make it good with, or without, intereſt?

XXX.

VYÁSA:—For a thing voluntarily waſted, the bailee ſhall be forced to pay the price with intereſt; for a thing neglected, the value only; for a thing loſt through *ſlight* inattention, ſomething leſs.

When the owner, having bailed a thing, demands it at a diſtant time, and the depoſitary, having waſted it, cannot deliver it; then a conteſt ariſing thereon, if it be proved that he has waſted the thing, he ſhall be compelled to make it good with intereſt. "Waſted" is not excluſively intended; but any advantage which the depoſitary procures for himſelf *by the thing bailed,* is fully meant; hence the ſale and other embezzlement of the thing depoſited, is comprehended in this precept.

XXXI.

VRĬHASPATI:—Whatever depoſitary procures advantage for himſelf by the thing bailed, *without the*

the consent of the owner, ſhall be amerced by the king, and made to pay the price of that thing with intereſt.

Here alſo " without *the* conſent *of the owner* " is determinately meant. Having procured advantage to himſelf by the thing bailed, without the conſent of the owner, if he make it good in another mode, he may be exempted from the payment of intereſt, and from the fine, by the forbearance of the owner, and of the king. The *Retnácara.*

The commentator's meaning is, that even if the thing bailed be waſted, the payment of intereſt and of a fine is not cuſtomary; but the value of the chattel only muſt be made good. Otherwiſe this text would be trivial, *becauſe the puniſhment of an offender is a matter of courſe.*

The preceding text (XXX), attributed in the *Mitácſhará* to CÁTYÁYANA, is aſcribed to VYÁSA by CHANDÉSWARA, MISRA, BHAVADÉVA, and others. The intereſt, according to MISRA, ſhall be the eightieth part *of the principal by the month*, as ordained by the law.

XXXII.

CÁTYÁYANA:—A depoſit, the balance of intereſt, a commodity ſold, and the price of a commodity purchaſed, not being paid after demand, ſhall bear intereſt at the rate of five in the hundred.

" If the debtor be a *'Súdra* " *muſt be ſupplied*, to reconcile it with the text, which directs intereſt at the rates of two and three in the hundred and ſo forth (Book I, V. xxix 2).

It is directed, that a thing voluntarily waſted ſhall bear intereſt: does intereſt commence from the day when the thing was depoſited, from the day when it was waſted, or from the day when it was demanded? 1. To this it is anſwered, it ſhall bear intereſt after ſix months from the date of the depoſit: for, the words " after three ſeaſons " being repeated in this text (XXXII) from the preceding text (*Book* I, V. lvi 1), it is proper to aſſume the

the date of the depofit, in anfwer to the queftion, from what date fhall three feafons be counted? 2. Some hold, that a depofit, not delivered on demand, fhall bear intereft fix months afterwards, becaufe demand is fuggefted by the context, where MISRA directs intereft at the rate of five *panas* in the hundred after fix months. 3. Since the wafting of the thing depofited is the caufe of its bearing intereft, under the authority of the text (XXX), we hold it proper, that intereft fhould commence (even earlier than fix months) from the day when the thing was wafted; but the other text (XXXII), ordaining intereft after fix months, is applicable to the cafe where a fraudulent depofitary, though the thing have not been wafted, refufes to deliver it on demand; like the price of a commodity purchafed, and like a balance of intereft, and fo forth. What then fhall be the rate of intereft? Two in the hundred, and other rates ordained by the law; becaufe thofe are in their nature legal rates, and becaufe intereft is fo limited by the text of MENU (Book I, V. xlii): and the intereft and amercement fhould be proportioned to the magnitude of the offence. But this does not coincide with the opinion of the author of the *Mitácfhará;* for he applies the text (XXXII) to a thing voluntarily wafted, and does not diftinguifh *payment of* intereft, and exemption from intereft, in cafes where a thing depofited is loft by neglect, and fo forth.

The text of VYÁSA (XXX), being placed under the head of Depofits Damaged, relates to fuch as are damaged by the ufe of them. Confequently, if a ftone or the like, bailed without feal, be ufed for three or four days, it fhall not be reftored with intereft: the payment of intereft regards things damaged by the ufe of them.

XXXIII.

YÁJNYAWALCYA:—If the depofitary, of his own accord, *without the confent of the owner*, ufe the thing depofited, he fhall be amerced, and compelled to pay the price of the thing with intereft.

"Of his own accord;" that is, without the affent of the owner. "Ufe the thing depofited;" employ it for his own purpofes.

poſes. Such a depoſitary ſhall be amerced. The fine not being ſpecified, he ſhall be amerced in the value of the thing, like the depoſitary who does not deliver the thing on demand; and he ſhall be compelled to pay the price of the thing with intereſt.

"For a thing neglected, the value only," (XXX); the depoſitary ſhall be compelled to pay the value only of a thing neglected, that is, of a thing loſt by his negligence, ſuch as diſregard of it becauſe it was another's property: in this caſe, intereſt ſhall not be exacted. It muſt be remembered, that, according to the third opinion above mentioned, if it be not delivered on demand, it ſhall bear intereſt after ſix months; but the value only ſhall be required, if it be made good immediately after the demand.

XXXIV.

VRĬHASPATI:—Should the bailee ſuffer the thing bailed to be deſtroyed by his negligence, while he keeps his own goods with very different care, or ſhould he refuſe to reſtore it on demand, he ſhall be compelled to pay *the value of* it with intereſt.

"By his negligence, while he keeps his own goods with very different care;" by neglect, after ſeparating the thing bailed from his own effects. If the depoſitary, fraudulently removing the thing depoſited, which was placed with his own goods, ſecure his own effects, but neglect the depoſit; and the thing, being guarded by no one, but left any where unheeded, be conſequently loſt; in that caſe he ſhall pay intereſt by way of fine, in like manner as if it had been waſted: for the removal of that thing was a great offence. In this caſe, the payment of an equal fine to the king is proper; but it is not mentioned by any Sage.

"Or ſhould he refuſe to reſtore it on demand;" ſhould he refuſe or evade reſtoring the depoſit, without making it known that the thing has been loſt by neglect; (for example, if he ſay, "Am I thy ſervant, that thou ſhouldſt depoſit thy effects with me? I know not where thy goods were placed, nor by whom, nor

what

what is become of them ;" or, " that thing was not bailed, but given to me :") in this cafe, it fhall be made good with intereft ; for his fault is great, in not making it known that the thing bailed has been loft. According to the third opinion, intereft muft be paid from the day the thing was loft ; in other inftances, according to the nature of each cafe, intereft commences after fix months *and fo forth*. Thus fome lawyers reconcile it to the law, which directs the value *only* to be made good if the thing bailed be not reftored on demand. Others hold, that if the thing depofited be not reftored on demand, it fhall be made good to the owner with intereft, and a fine be paid to the king equal to the value of that thing : thus eftablifhing, by implication, the confiftency of all the texts with each other. Some reconcile them by directing the value to be made good with or without intereft, according to the qualities of the depofitary.

The Mitácfhará explains " fomething lefs " (XXX) a fourth lefs. The meaning is, that, if the thing be inadvertently loft, (having been neglected through forgetfulnefs, long after it was received in depofit,) the fault being fmall, three fourths only of its value fhall be made good.

XXXV.

YÁJNYAWALCYA :—If a *fealed depofit* be loft, *even by the act of* GOD *or the king*, after it has been demanded and not reftored, *the bailee* fhall be compelled to pay the value of the thing, and an equal amercement.

If it have been demanded, (required by the bailer,) and not reftored by the bailee ; fhould a lofs of the depofit afterwards happen by the act of GOD or of the king and fo forth, effects of equal value muft in that cafe be given, and a fine of the fame amount be paid to the king.

The *Mitácfhará*, *Retnácara*, and the reft, concur in this expofition. The author of the *Mitácfhará* inferts this hemiftich as an exception to a text quoted in the preceding fection (XXV). Here the thing is made good without intereft, becaufe he muft make

 good,

good, out of his own effects, the thing bailed, which has been loſt by accident. This is not inconſiſtent with the opinion of others, *grounded on the following text:*

XXXVI.

NÁREDA:—He who reſtores not a depoſit to the bailer, though required by him, ſhall be fined, to the uſe of the king; and, if it be *afterwards* loſt, ſhall pay its full value.

2. And he who procures advantage for himſelf *by the thing bailed,* without the conſent of the bailer, ſhall be amerced, and be liable to pay the value of the thing, with intereſt.

They hold that a fine is here directed, if the depoſit be fraudulently withheld, though not loſt; and the fine ſhall be equal to the value of the thing, as in the preceding caſes, and as intimated by the ſequel of the text: the depoſit muſt of courſe be reſtored; but it ſhall be reſtored with intereſt, on the concurrent import of the text of VRĬHASPATI.

If a thing not reſtored on demand be loſt, without any fault on the part of the depoſitary, by the act of GOD or the king, its value ſhall be made good to the owner without intereſt, as has been already mentioned almoſt *in as many words.* A certain author ſays, if a thing be merely refuſed when demanded, it ſhall be made good with intereſt; but if it be alſo loſt by accident, its value ſhall be paid without intereſt, and a fine ſhall be paid to the king. Of theſe opinions, whichever ſeems beſt ſupported may be adopted.

The ſecond verſe (XXXVI 2) has been in a manner already expounded; for it correſponds with the text of VRĬHASPATI (XXXI): and the amercement ſhall be equal to the value of the thing; for what is affirmed in one caſe, is applicable to other ſimilar caſes.

XXXVII.

XXXVII.

MENU :—He who restores not a thing really deposited, and he who demands what he never bailed, shall both be punished as thieves, or pay a fine equal to the value of the thing claimed.

In a suit where a deposit is alleged by one party and denied by the other, if it be proved that the thing was in fact bailed to him, the depositary shall be punished as a thief; according to the quantity and nature of the thing proved to have been bailed, he shall be punished as a thief, by death, or confiscation, or other punishment ordained for theft of such things in certain quantities: and such shall be the punishment, even though the deposit be merely denied. But if the depositary be *in general* virtuous, the legislator directs, that he shall only pay a fine equal to the value of the thing: consequently, he shall not in this case be punished by death, or *confiscation, or* the like. The same must be understood of the claimant, according to the circumstances of the case, if it be proved that no deposit was made. CHANDÉSWARA holds, that they shall be punished as thieves, if the suit regard valuable things; and pay a fine equal to the value of the thing, in the case of a trifling demand. CULLÚCABHATTA says, 'they shall be punished as thieves, if gold, gems, pearls or the like be demanded; or, in the case of a trifling demand, shall pay a fine equal to the value of the thing claimed.' But a *Bráhmana*, he adds, whether virtuous or not, who withholds a thing deposited, or demands what he never bailed, is not liable to the punishment of death and the like.

XXXVIII.

MENU :—The king should compel a fraudulent depositary, without any distinction between a deposit under seal or open, to pay a fine equal to its value.

And that if the *Bráhmana* be free from vice; but if he be vicious,

vicious, he ſhall pay a fine equal to double its value, as directed in a text which will be quoted from the *Matſya purāna.* Such is the modern interpretation. CHANDÉSWARA remarks: Puniſhment ſimilar to that of theft is denied by the ſecond text (XXXVIII); and the exaction of a fine equal to the value of the thing is poſitively ordained, whether the depoſit be of conſiderable or trifling value; and that is to be underſtood in the caſe of a *Bráhmana* being the depoſitary. "Without any diſtinction between a depoſit under ſeal or open:" from this expreſſion it appears, that all that which has been propounded reſpecting the non-delivery of open depoſits and ſo forth, is alſo applicable to the non-delivery of a ſealed depoſit, the unauthorized uſe of it, and ſo forth. CULLÚCABHATTA ſays, let the king amerce a fraudulent depoſitary in a ſum equal to the value of the thing bailed: from the parity of the caſes, the text does not repeat, that he who demands what he never bailed ſhall alſo be fined. If the offence be great, it might appear from the preceding text, that corporal puniſhment is to be inflicted on any other than a *Bráhmana:* this text denies it, for the law directs a pecuniary fine. Nor is the preceding text unmeaning: for this text applies to a firſt and ſlight offence; and the preceding text intimates a pecuniary fine for a ſecond offence, that is the higheſt amercement ordained in caſes of theft.

XXXIX.

MENU:—That man who by falſe pretences gets into his hands the goods of another, ſhall, together with his accomplices, be puniſhed by various degrees of whipping or mutilation, or even by death.

If any man, except a creditor or a *Bráhmana*, by fraud or by violence, and cauſing much pain and ſo forth, (for "pretence" is expreſſed in the plural number,) get into his hands the goods of another, whether they be things bailed or otherwiſe, (for the precept is general;) he ſhall, together with his accomplices, be puniſhed by various degrees of corporal pains ſhort of death, or even by death; that is, by a blow with the hand or with ſandals, or

or by cutting off the hand or foot, or even beheading, according to the value of the goods, the qualities of the man, his clafs, and the like. Firft taking the goods, afterwards behead him, or otherwife punifh him.

" By falfe pretences;" by frauds of various kinds. " His accomplices;" thofe who have affifted him in getting into his hands the goods of another. " Publickly;" in an open place.

CHANDÉSWARA.

He who obtains the goods of another by fraud, under a falfe pretence, (telling him, " the king is angry with thee, I will fave thee, give me fome thing;" and thus receiving, as a gratuity, wealth, a female *flave*, or the like;) fhall, together with his accomplices, be punifhed by the king, in the prefence of many people, by various degrees of punifhment, fuch as mutilation of hand or foot, beheading, and the reft. CULLÚCABHATTA.

XL.

Matfya purána:—He who reftores not a thing really depofited, and he who demands what he never bailed, fhall both be punifhed as thieves, or fhall pay a fine equal to double the value of the thing claimed.

This text is reconciled by CHANDÉSWARA to the text of MENU (XXXVII), by directing, that the fine fhall be equal to the value, or to double the value of the thing claimed, according to the good or bad general conduct of the perfon to be punifhed. Any other than a *Bráhmana*, if vicious, fhall be punifhed as a thief; if virtuous, fhall pay a fine equal to the value of the thing: but a *Bráhmana*, if vicious, fhall pay a fine equal to double the value of the thing; if free from vice, a fine equal to the value only. Any other than a *Bráhmana*, who, by falfe pretences, gets into his hands the goods of another, fhall receive corporal punifhment proportionate to the cafe; but a *Bráhmana* fhall incur the pecuniary punifhment, fubftituted for corporal punifhment, as declared under the title of Theft: fuch is the modern interpretation.

If

If the goods of another be obtained by falſe pretences, various degrees of corporal puniſhment ſhall be inflicted on the offenders. The fraudulent depoſitary ſhall be puniſhed as a thief, if the depoſit conſiſt of gold, gems, pearls, or the like. In the caſe of a trifling demand, the fine ſhall be equal to the value of the thing, if it concern any other than a *Bráhmana*, and his general conduct be good; but equal to double the value, if his morals be not good. A *Bráhmana* ſhall never be puniſhed like a thief, whether the value of the depoſit withheld be conſiderable or trifling, nor if the thing have been obtained under falſe pretences, but he ſhall pay a fine equal to its value. Such is the mode according to the opinion of CHANDÉSWARA. But, according to CULLÚCABHATTA, any other than a *Bráhmana*, who obtains gold, gems, pearls or the like by falſe pretences, or withholds a depoſit conſiſting of ſuch valuable effects, for a ſecond offence ſhall be puniſhed as a thief; but if the thing be of trifling value, he ſhall pay a fine equal to its worth. It certainly follows, that in all caſes a *Bráhmana* ſhall pay the value of the thing. Or, a fine equal to double the value of the thing (XL), may be applicable to the caſe of a *Bráhmana*, on a ſecond offence, if gold or pearls or the like be demanded; but the fine ſhall be equal to the value only for a firſt offence, whoever be the perſon, or whatever be the thing. MENU mentions incidentally puniſhment by death and ſo forth, in the caſe of a man who obtains the goods of another by falſe pretences.

Some hold, that he who reſtores not a depoſit, or who embezzles it, and he who falſely claims a depoſit, and *thus* obtains the goods of another by falſe pretences, ſhall be puniſhed as thieves, if they be vicious and devoid of all virtue: but if neither vicious nor virtuous, or both vicious and virtuous in equal degree, they ſhall be amerced in double the value of the thing; and if virtuous, and not vicious, in the value only. By the term "not reſtoring a depoſit," is intended impoſition by artful diſcourſe, not the concealment of the depoſit; but embezzlement is the fraudulent withholding of the depoſit: the fraudulent withholder covetouſly deſires to appropriate the thing by falſe aſſertions; he is deſcribed by CULLÚCABHATTA. Since corporal puniſhment cannot be inflicted on a *Bráhmana*, the puniſhment ſubſtituted for it, under the title of Theft, muſt be underſtood in

 the

the expreſſion " puniſhed *as thieves*." In the ſecond text, quoted from MENU (XXXVIII), " ſhall be puniſhed as thieves," muſt be fetched from the preceding text (XXXVII): and the latter text (XXXIX) gives ſome detail on the puniſhment of thieves. The texts of other Sages (XXXVI I &c.), intimating a fine equal to the value of the thing, relate to the caſe of a man who is in general virtuous and free from *all* vice. Of the various ancient and modern opinions, one is to be ſelected; many have been mentioned for diſcuſſion.

CÁTYÁYANA propounds a diſtinction on bailments for a ſtipulated time.

XLI.

CÁTYÁYANA:—A depoſit (*upanid'hi*) ſhall be recovered at the time ſtipulated; but let the *owner* leave it until the period expire: when that does expire, if the depoſitary reſtore not the thing, he ſhall be compelled to pay double the fine.

" Recovered " by the bailer, " at the ſtipulated time;" at the fixed time for receiving it back. " Until the period expire;" whilſt leſs than that time is elapſed. Hence he ſhall recover it when the period is elapſed, and not before. But a depoſitary, not reſtoring the depoſit when the full period is expired, ſhall be chaſtized. The *Retnácara.*

Whatever fine, for whatever kind of property, has been declared in the caſe of a thing bailed without ſtipulating a period, double that fine ſhall, on the authority of the law, be paid by him who does not reſtore, at the ſtipulated time, a thing of a ſimilar kind which had been bailed for time. It follows, that, in the caſe where the fine is ordained at double the value of the thing bailed, he ſhall pay four times the value if it was bailed for time.

Simple men hold, that " double the fine" intends double the value including the fine: the fine ſhall be equal to the value of the thing, and the value ſhall be paid to the owner. This ſuppoſes a caſe where the depoſitary is in general virtuous: and the text intimates, that there is no fine if a thing bailed for time be refuſed before the time expire.

But

But others interpret the text, 'when a period is not ſtipulated,' inſtead of "when the period does expire." If the depoſitary reſtore not the thing on demand, he ſhall pay double the fine, that is, double the value including the fine; and they apply this hemiſtich to the caſe of a thing bailed for no ſtipulated time, provided the depoſitary be in general virtuous. Others again explain "double the fine," double the ſum as a fine: conſequently the depoſitary ſhall pay double the value of the thing by way of fine; and they hold, that this is conſiſtent with the opinion delivered in the *Retnácara*, where this text is conſidered as relating to the ſame ſubject with the text of the *Matſya purána*. This opinion, in part comprehending that of others, ſeems ſatisfactory.

"A depoſit" *(upanid'hi)* is here employed in a general ſenſe (V. viii).

XLII.

CÁTYÁYANA:—He who, having received a loan for uſe, does not return it, though required *by the owner*, ſhall be compelled to reſtore it by harſh reproof, or ſhall be amerced if he *ſtill* refuſe to reſtore it.

Having borrowed ornaments for decoration, an awning or the like for a company, and ſo forth, if he do not reſtore them, though demanded by the owner, the king, reproaching him in opprobrious terms, ſhall require him to return them: if even then he reſtore them not, he ſhall be amerced; and the fine may be equal to the value of the thing, as before directed. For CÁTYÁYANA applies the law reſpecting bailments to loans for uſe and the like, declaring, that "theſe rules are propounded for all depoſits *(upanid'hi)*:" But the additional text intimates a diſtinction, which will be mentioned by and by (LI).

It muſt be conſidered, that if a creditor, having artfully obtained from his debtor an awning or the like, refuſe to reſtore it, employing legal deceit, as authorized by VRĬHASPATI, for the recovery of the debt, he is not to be reproached, but ſhall be made to give credit for it in payment of the debt; and that ſuppoſes the period for which the loan was made to have expired, and the debtor

debtor to have neglected, or to be unable to pay the debt. But if the period have not expired, he cannot employ artifice. And further the ſame rule is applicable to depoſits and the like, according to circumſtances.

A diſtinction is mentioned in the caſe of loans for uſe:

XLIII.

CÁTYÁYANA:—When it is borrowed for a particular purpoſe, or a ſpecified time, if it be demanded when the purpoſe is only half accompliſhed, it ſhall not be recovered, nor ſhall the borrower be compelled to reſtore it.

If a man have borrowed an awning for the company entertained at the nuptials of his ſon, the owner cannot take it back on the day of the nuptials, after one watch of the day is paſſed; for the purpoſe is only accompliſhed in part. But it may be taken if the purpoſe have been fulfilled: it certainly cannot be exacted if any part of the purpoſe be yet unaccompliſhed. So, if ornaments or the like be borrowed to be worn a month, the ornaments cannot be taken back before the end of the month: and the wearer of the things borrowed ſhall neither be amerced, nor reproached.

A further diſtinction is mentioned:

XLIV.

CÁTYÁYANA:—But where the owner's purpoſe would be diſappointed, from the want of that thing, the borrower may be compelled to reſtore it before the time ſtipulated, even though his purpoſe be only accompliſhed in part.

"Where the owner's purpoſe would be diſappointed" *(vipatti)*; where his buſineſs would go to ruin, according to the literal ſenſe of the verb *pad*, move. Conſequently, if the owner's buſineſs would be expoſed to diſappointment for want of that thing,

 it

it may be taken back by him before the period expire, even though the borrower's purpofe be only half fulfilled; meaning generally, though it be not fully accomplifhed. If the borrower refufe to reftore it immediately, he may be fined or reproached, according to circumftances.

It muft be underftood, that all thefe rules provide againft fraud. Therefore, when a thing borrowed to be ufed a month, is fent to another province, and the owner happens to need the thing, but it cannot be brought back, the borrower fhall not be fined or reproached, though the owner's purpofe be difappointed: but the borrower muft mention, at the time of borrowing the thing, that he intends to fend it to another province. This muft be confidered as deducible from plain reafoning.

What is to be done in a fuit wherein a depofit is alleged by one party and denied by the other? There muft be a trial by ordeal (XV).

" A depofit is declared to be of two forts." A depofit authenticated by a writing is not diftinguifhed by any Sage. This meaning is there denoted: without a purpofe of his own, a depofitary does not execute a writing; but the depofitor caufes the bailment to be attefted. Why is it faid, under the title of Loans, that a written acknowledgement of a pledge fhall be given by the creditor to the debtor? The anfwer is, as a loan is made from a defire of gain, fo a writing is executed by the creditor from a wifh to confer a favour while he takes a pledge, by furnifhing grounds for confidence that the thing fhall be received back. But fome admit a depofit authenticated by a written contract.

" It muft be reftored in the condition and manner in which it was bailed" (V. xv): the depofit, whether fealed or open, attefted or unattefted, muft be received back in the fame manner in which it was bailed. If altered, or denied, there muft be a trial by ordeal: without it, the depofit is not eftablifhed on the fimple affertion of the plaintiff.

Two modes of proof are declared for the two forts of depofit; attefted, and privately bailed.

XLV.

Vrihaspati:—Him who is convicted by the evidence

dence of witneſſes, or by ordeal, of ſecreting a depoſit received, let the king compel to reſtore the depoſit, and to pay a fine equal to its value.

If an atteſted depoſit be denied by the depoſitary, let the king, aſcertaining it by the evidence of competent witneſſes, compel him to reſtore it; and, aſcertaining by ordeal a thing privately bailed, let him compel the depoſitary to reſtore it. On the authority of the text of YÁJNYAWALCYA, ("on failure of each of theſe, ordeal is ordained in each caſe,") proof by ordeal is admitted by the author of the *Mitácſhará*, on failure of evidence.

XLVI.

MENU:—The king muſt decide the queſtions, after friendly admonition, without having recourſe to artifice; for, the honeſt diſpoſition of the man being proved, the judge muſt proceed with mildneſs.

Omitting reproaches and artifice or the like, ſuch as bailing other effects to him, let the king decide the queſtion after friendly admonition, and not haſtily direct a trial by ordeal; or, conſidering the character of the man, and knowing his honeſt diſpoſition, let the judge proceed with mildneſs. The text, thus expounded by CULLÚCABHATTA, forbids haſty recourſe to ordeal. Therefore recourſe muſt be had to ſenſible proofs.

XLVII.

MENU:—He who reſtores not to the depoſitor, on his requeſt, what has been depoſited, may firſt be tried by the judge *in the following manner*, the depoſitor himſelf being abſent.

2. On failure of witneſſes, let the judge actually depoſit gold, *or precious things*, with the defendant, by

by the artful contrivance of ſpies, who have paſſed the age of childhood, and whoſe perſons are engaging.

3. Should the defendant reſtore that depoſit in the manner and ſhape in which it was bailed *by the ſpies,* there is nothing in his hands for which others can juſtly accuſe him:

4. But if he reſtore not the gold, *or precious things,* as he ought, to thoſe emiſſaries, let him be apprehended and compelled to pay the value of both depoſits: this is a ſettled rule.

If the depoſitary do not reſtore the thing, though required by the depoſitor, let him be ſued before the king. Let the judge immediately demand it of the depoſitary with mild expoſtulation, without threats. If the depoſitary, apprehending the diſgrace of a fine, or of corporal puniſhment, which it is the king's duty to inflict, and reflecting that he cannot conceal the fact, acknowledge the depoſit, he ſhall be compelled to reſtore it; and in this caſe there is no ordinance exempting him from a fine. But if he do not acknowledge the depoſit, let it be tried by oral evidence: this appears from the mention of "failure of witneſſes." If there be no witneſſes, (the depoſit having been privately made, or the witneſſes being dead,) the legiſlator directs, "let the judge actually depoſit gold, *or precious things,* with the defendant, by the artful contrivance of ſpies, apt in detecting ſecret practices, who are neither very old nor very young, and whoſe perſons are engaging:" meaning generally ſpies qualified for the employment. By artful contrivance or ſtratagem, actually depoſiting gold belonging to himſelf, let him try the matter: the text ſhould be ſo ſupplied. The legiſlator ſubjoins the teſt: ſhould the defendant's veracity be unimpeached in every reſpect, the depoſit being kept *and reſtored* as it was bailed, he muſt be acquitted of the offence for which he is accuſed by the claimant: becauſe, were he diſhoneſt, he would ſecrete the thing bailed by diſguiſed emiſſaries. Let the judge alſo try the honeſty of the ſuppoſed depoſitor; and if both appear honeſt, let him have recourſe to ſome other

other mode, ordeal or the like: ſuch is the induction of common ſenſe. "But if he reſtore not the gold," let him be compelled, by harſh reproof, to make good both ſorts of depoſit, ſealed and opened *; and the reproaches and puniſhment ſhall be proportioned to the trouble he has occaſioned. The *Retnácara* and the reſt concur in this interpretation.

Here a doubt may occur, ſhould the ſuppoſed depoſitary, or depoſitor, be acquainted with the rules of judicial procedure. If the man do not act diſhoneſtly in regard to the thing bailed by emiſſaries, though he be diſhoneſt in regard to the depoſit claimed, his practices cannot eaſily be detected. For this purpoſe much labour muſt be employed. Let the judge, night and day, place ſpies in diſguiſe, on all ſides of him, and near the walls of his houſe, that it may be known, by means of ſuch emiſſaries, what converſation he holds with his intimate friends at various times, and what his occupations are: the mode mentioned by the Sage is merely an example †.

CHANDÉSWARA

* The tranſlation of the text, as given in the Inſtitutes of Hindu Law, chap. viii, v. 184, has been followed in preference to this interpretation.

† The compiler takes occaſion to relate a popular tale.—A ſoldier, intending to travel to a foreign country, and wiſhing to place in other hands his property, conſiſting of gold and ſilver, put it into a jar of oil, which he delivered into the hands of an oilman, ſaying, "keep this jar of oil for me." The oilman, ſuſpecting, from its great weight, that the veſſel contained ſome metallic ſubſtance, took out the gold and ſilver, and filled up the veſſel with oil. The ſoldier returning, received back the jar of oil, and miſſing the gold and ſilver, demanded his property from the oilman. He replied, "this is the very jar of oil which was intruſted to me; take it away: I know not what it contained." The ſuit was carried before the king, who, after much inveſtigation, told the oilman, "I will give an anſwer, after making trial of your honeſty; let this wooden cheſt remain in your houſe one night; on your bringing it back in the morning, the queſtion ſhall be decided." Placing in it a ſenſible and learned man furniſhed with paper, pen, and ink, he delivered to the oilman an old wooden cheſt, in the lid of which many holes were bored. The oilman having received it, at night, in converſation with his wife, ſaid, "this king tries my honeſty, by depoſiting a thing of his own with me; am I ſuch a thief, that, embezzling the king's depoſit, I ſhould incur puniſhment? Obtaining the king's confidence by reſtoring the cheſt with its contents in the morning, and cheating the ſoldier, I ſhall live in affluence upon the valuable property gained from him." The concealed ſpy wrote down the whole of this and the reſt of their converſation. In the morning, the oilman being brought before him, together with the cheſt, the king, informed of the whole circumſtance by the notes taken down by the man who was concealed in the cheſt, inflicted due puniſhment on the oilman, and compelled him to reſtore the effects to the ſoldier.

CHANDÉSWARA expounds "artful contrivance," ſtratagem. He who interrogates *(prich'hati)*, is the interrogator *(prát)*. He who pronounces *(vivacti)*, is the pronouncer *(vivác)*: firſt the judge *(prád'vivác)* is interrogator, next pronouncer *of judgment;* an appoſition in the form called *carmad'háraya*, as in the example, 'bathed and anointed.' Having firſt inquired all circumſtances from the plaintiff, the judge *(prád'vivác)* himſelf pronounces what is proper: he is an officer of the king.

If it be alleged by the depoſitor, that a hundred *ſuvernas* were bailed, and it be proved by witneſſes, or by any other popular proof, or by ordeal, that fifty *ſuvernas* were bailed, the following text ſhows what is to be done by the king in that caſe:

XLVIII.

MENU:—*Regularly*, a depoſit ſhould be produced, the ſame in kind and quantity as it was bailed, by the ſame and to the ſame perſon by whom and from whom it was received, and before the ſame company *who were witneſſes to the depoſit:* he who miſtakes a depoſit, ought to be fined.

The depoſitor who claims more, and the depoſitary who acknowledges leſs than was depoſited, ought to be fined. Such is the meaning according to the *Retnácara;* and in this CULLÚCABHATTA concurs. "Before the ſame company" is mentioned to denote witneſſes, but is merely an example: conſequently, the rule is the ſame if the aſcertainment be made by other popular proof, or by ordeal. He ſhall pay a fine equal to that part for which a falſehood was aſſerted; not equal to the whole of the effects claimed, nor to the value of the thing *actually* depoſited; for the offence is leſs.

XLIX.

MENU:—Such is the mode of aſcertaining the right in all theſe caſes of a depoſit: in the caſe of a

depoſit

depoſit ſealed up, the bailee ſhall incur no cenſure on the re-delivery, unleſs he have *altered the ſeal, or* taken out ſomething.

He ſhall incur no cenſure if he have taken out nothing from a ſealed depoſit, but he ſhall incur cenſure if he have taken out any thing; and, if he take out any thing from an open depoſit, he ſhall incur no cenſure if he afterwards reſtore it.

The *Retnácara.*

We ſay, ſuch is the mode of aſcertaining the right and recovering the depoſit, (namely the mode above mentioned XLVII 2,) in all theſe caſes of depoſit, (meaning generally all depoſits, loans for uſe, and the like:) conſequently, in the caſe of any depoſit, or loan for uſe, if the depoſitary acknowledge the receipt of ſilver, and the depoſitor allege a bailment of gold; or if the conteſt regard the quantity; it ſhall be tried by the evidence of witneſſes, by artifice, or the like, as directed by the former text (XLVII 2). But, in the caſe of a depoſit ſealed up, if it be proved that the depoſitary did not break the ſeal, and after taking out ſomething ſeal it up again, he ſhall incur no cenſure or diſgrace. Herein CULLÚCABHATTA concurs *.

MENU:

* The compiler takes occaſion to inſert in his text another popular tale.—A rich man placed in the houſe of a friend two jars filled with effects, having cloſed the mouth of each jar with lac, on which his own ſeal was impreſſed. Some time after his death, his ſon, inſpecting his father's notes of his income and expenditure, and of the diſpoſal of his property, and finding a note of thoſe two jars, claimed them: and the depoſitary accordingly reſtored them. The owner's ſon, opening both veſſels, found gold coins in one, and pieces of iron in the other. Upon this he addreſſed the depoſitary: "Were pieces of iron intruſted to thee by my father? reſtore to me the gold coins." The other replied, "both jars remain as they were marked with thy father's ſeal; I know nothing of their contents." The diſpute being referred to arbitrators, theſe heſitated on ſeeing the lac, on which was the impreſſion of his father's ſeal, broken into pieces; and the depoſitor's ſon obſerved, "this ſeal was made by ſome artiſt, not by my father." After reflection, the arbitrators weighed the pieces of iron and the gold coins, and finding the weight of both equal, and ſeeing, in the *owner's* notes of the diſpoſal of his effects, that two jars were mentioned as placed in the depoſitary's houſe, they determined that the pieces of iron were probably placed to verify the weight of the gold: and thus the parties were reconciled. Therefore, adds the compiler, in the caſe of a ſealed depoſit, the ſeal ſhould be broken before witneſſes, or the thing ſhould be opened, *on re-delivery*, without breaking the ſeal into pieces.

L.

MENU :—Thus let the king decide causes concerning a deposit, or a friendly loan for use, without showing rigour to the depositary.

In the mode before directed, without showing rigour to the supposed depositary. So the *Retnácara*. The gloss of CULLÚCABHATTA is similar.

By this it is expressed, that, in ascertaining the right in the case of a deposit, rigour and deceit, and other expedients propounded by VRĬHASPATI, shall not be employed against the supposed depositary, as in ascertaining the right and so forth in cases of debt. If it cannot be ascertained by popular proof, such as the evidence of witnesses and the like, it shall be tried by ordeal (XIII). Proof by ordeal is directed for both parties, the supposed depositor and the supposed depositary : so the text is explained in the *Retnácara*. Consequently, in a suit wherein one party alleges a deposit which the other denies, ordeal is ordained to determine the right : to answer the question, whether the supposed depositor or depositary shall submit to ordeal, the text directs both parties, *that is either party*. In this case the rule is, that ordeal shall be performed by whichsoever party appears to surpass the other in honesty; it is not positively required that ordeal be performed by the party accused. In cases of bailment for delivery, loans for use, and the like, the trial by ordeal on failure of evidence, the decision, and the amercement, shall *in general* be the same as in the case of any other deposit (XI) : but a distinct fine is mentioned in the case of a loan for use.

LI.

Matsya purána. — He who, having received a loan for use, does not restore it as he ought, shall be compelled to restore it by harsh reproof, or shall be fined in the first amercement.

It is here denoted, according to CHANDÉSWARA, that, if a loan

for

for uſe be not reſtored, the fine ſhall not be equal to the value of the thing, but equal to the firſt amercement; for, no where otherwiſe explaining the text of CÁTYÁYANA (XLII), he cites this text, which directs the firſt amercement, immediately after the text of CÁTYÁYANA.

The reconciling of theſe texts, by diſcriminating the degrees of virtue in the depoſitary, is proper, as well as the texts of ſeveral Sages, which direct that a man who embezzles a depoſit ſhall be puniſhed like a thief, or pay a fine equal to the value of the thing, and the like. As the law of depoſits in general is fitly extended to loans for uſe, and the firſt amercement is in ſome caſes the puniſhment of a thief, we hold that this text refers to thoſe caſes. The firſt amercement is propounded by MENU: "now two hundred and fifty *panas* are declared to be the firſt *or loweſt* amercement;" and it has been often explained.

As a depoſit, whether ſealed or open, may not be re-delivered to ſons or the reſt, ſo a loan for uſe may not be re-delivered to them, while the owner lives: why ſhould it be otherwiſe? But with the owners conſent it may be delivered to ſons and the reſt, and even to a ſtranger.

LII.

VRÌHASPATI:—He offends not if he deliver a thing borrowed for uſe *to another perſon,* with the conſent of the owner.

Supplied from the gloſs of the *Retnácara:* and common ſenſe extends this very rule to open depoſits and the reſt. But the owner's conſent ſhould be atteſted; otherwiſe, a ſubſequent conteſt would not be obviated.

If the thing borrowed for uſe be loſt by accident, after the expiration of the period for which it was borrowed, an equivalent muſt be given: for the caſe is ſimilar to that of a bailment with an artiſt.

LIII.

CÁTYÁYANA:—If the artiſt keep the thing bailed, after

after the time agreed on for working it *into ornaments and the like*, he ſhall be forced to pay its value, even though it be deſtroyed by the act of GOD.

2. What is deſtroyed by his own act is loſt to the hired *artiſt, and ſhall be made good* even earlier *than the time ſtipulated;* but if he have tendered it, it is loſt to the owner who did not accept it.

"The time agreed on;" the number of days appointed as the period *for working the thing bailed into ornaments or the like.* "The thing bailed;" the bailment with an artiſt. After the time for which it was received; that is, received on a promiſe to deliver ornaments at the expiration of ten days, *or other ſimilar promiſe.* If the artiſt keep the thing after that time, beyond the ſtipulated period, he ſhall be forced to make it good, even though it be deſtroyed by the act of GOD or of the king. Such is the meaning of the firſt text. What is deſtroyed by an act contrary to the owner's requiſition, ſhall be made good to the owner by the hired *artiſt* even earlier than the ſtipulated time; but if he tender the thing finiſhed in the mode directed, and the owner do not accept it, and it be afterwards deſtroyed by the act of GOD, it ſhall not be made good to the owner by the hired *artiſt.* The *Retnácara.*

The meaning of this gloſs is, that, where ornaments or the like are intruſted to an artiſt, for repair; in that caſe, if the artiſt, from his own conceit, without the aſſent of the owner, attempt to remake the unbroken parts; and the ornaments, happening to be old, are deſtroyed; the artiſt ſhall pay the value, or deliver an equivalent to the owner, even earlier than the time agreed on for repairing the ornaments.

Others, interpreting "hired" to mean in this place artiſt, and reading "in the caſe of a thing deſtroyed by his act," explain "act," work different from that directed by the owner, and ſupply the words "*bailed to an artiſt*:" and the interpretation is this: "in the caſe of a thing bailed to an artiſt, and injured by his acting inconſiſtently with the owner's directions, the artiſt *ſhall be forced to pay its value*;" for this is inferred from what preceded. Conſequently, if a part, however ſmall, of the thing in queſtion

queſtion be broken by working on the part directed by the owner, it muſt be reſtored to its former condition; that is, the loſs falls on the artiſt.

The laſt hemiſtich of the *ſecond* verſe conveys this ſenſe: if the artiſt, having finiſhed the work on thoſe parts for which the thing was intruſted to him, tender it to the owner, and he do not receive it, ſaying, "let it remain for the preſent," or deſiring the work to be done in another manner, it is the owner's loſs; that is, it ſhall not be made good by the artiſt. But if the artiſt, agreeing to do the work in another manner, fixed a time, then, ſhould that agreement be infringed, the fault is his.

Should it be conteſted by the owner, that he had directed different work; and by the artiſt, that the very work directed was performed: in this caſe, the artiſt, even though he had tendered the thing, ſhall be compelled to pay its value if it be proved that different work had been directed, but not otherwiſe. And in every caſe he ſhall be forced to pay its value, if he had not tendered it.

Here learn incidentally what is to be done by the owner. In a caſe where the form of the work is diſputed, let him firſt receive his own chattel, and afterwards conteſt the matter at the time of paying the artiſt's wages. If the artiſt will not deliver the thing without receiving his wages, it is no tender; in this caſe, witneſſes ſhould be taken. When the cauſe is tried at a ſubſequent time, the right of one party being aſcertained by evidence or by ordeal, whoever is caſt in the ſuit, the loſs ſhall be his, even though the thing have been loſt by accident. If the wages have been already paid, or it be ſuſpected that the thing has been changed, let the owner inſtantly apply to the king or his officer, or take witneſſes, as above mentioned.

This and other points ſhould be underſtood in the caſe of a thing ſeized by the king or the like, as well as in the caſe of a thing loſt by the act of God: and the ſame alſo, according to circumſtances, if gold, ſilver, or the like, be bailed for working into new ornaments.

LIV.

VRIHASPATI:—If the loſs be *occaſioned* by the defects of the thing bailed, the artiſt ſhall not be

compelled

compelled to make it good; but if the loſs happen by the artiſt's fault, he ſhall be compelled to make good what was intruſted to him for repair, *or for work.*

In the caſe of a loſs cauſed by the defects of the thing bailed, (if it be unfit to bear the heat of the fire, or operation of cutting and hammering, in conſequence of its being very old,) there is no fault in the artiſt: for example; where a gun is to be repaired of which the wood or the iron is found too weak, in conſequence of its being very old. Otherwiſe, it is the artiſt's fault if it be deſtroyed by a pin driven through it, or the like: for example, if the gun be broken, where the wood and iron are joined, by a ſtroke of a hammer in a wrong place: and ſo in other caſes.

LV.

Vrĭhaspati:—If the property of another, bailed by the mode called *nyàſa* and the reſt, be conſumed, or neglected and loſt even without deſign, the bailee himſelf is the man who muſt make them good.

Not his ſon, wife, or other heir. But if loſt by the fault of the heir, he ſhall be compelled to make it good; ſo the text is explained in the *Retnácara.*

Since a depoſit, conſumed by the depoſitary, is equal to a debt, it ought to be recovered from the ſon or other heir: but this diſtinction is not mentioned by any Sage; and it has only been ſo ſettled by authors. If the depoſit be loſt by the depoſitary, it ſhall not be recovered from his ſon or other heir; but if loſt by his ſon or other heir, while the depoſitary is alive, it ſhall be recovered from that heir: or it may be recovered from the father, ſince the ſon's loſs may be admitted to be the father's loſs, in the ſame manner as the law directs (Ch. IV, v. 56), that the gain made by a ſon before partition is the father's. If it be deſtroyed by a ſtranger, it is conſidered as the act of God: and the thing

ſhall not be recovered from the depoſitary, but from that ſtranger. This is to be inferred from common ſenſe, and from the text of CÁTYÁYANA (XXVII 2)

Should the depoſitary lend to another the thing bailed, what is the rule in that caſe? It is anſwered, If he lend it by conſent of the owner, the gain and the loſs are the depoſitor's: and this is controverted by none. He ought not to lend it, without the owner's conſent: but if he do lend it inadvertently, the gain is the owner's; for he only has property in the thing; and the depoſitary, like a box or the like, is merely the holder of it. If the loan be loſt by the death or inſolvency of the debtor, the depoſit muſt be made good by the depoſitary; ſince it was loſt by the fault committed by him in lending it. Neither a gift, a ſale, nor other alienation by the depoſitary, is valid, as will be mentioned under their reſpective titles. Thus may the law be conciſely ſtated.

According to the opinion of thoſe who admit a thief's property in the thing ſtolen, the bailment of effects ſtolen is valid. *Let the reader* draw his own inferences on this and other *topicks*.

CHAP.

CHAP. II.

ON

SALE WITHOUT OWNERSHIP.

SECT. I.—*On the Avoidance of Sale without Ownership.*

I.

VRĬHASPATI:—After bailments, ſale without ownerſhip has been propounded by BHRĬGU: liſten attentively to that law, which I promulge, together with the particulars *regarding the production of the ſeller, and the juſtification of the buyer.*

If the depoſitary ſell the thing bailed, what ſhall be the conſequence? In anſwer to this queſtion, the law on ſale without ownerſhip is adduced. To this *order of promulgation*, BHRĬGU alſo aſſents. "Together with the particulars" relative to the production of the ſeller, the juſtification of the buyer, and ſo forth. Under this title he firſt defines ſale without ownerſhip.

II.

VRĬHASPATI:—He who clandeſtinely ſells an open depoſit, a thing bailed for delivery, a ſealed depoſit, effects ſtolen, a pledge, or a thing bor-

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rowed for uſe, *or bailed to an artiſt, or the like* is conſidered as *ſelling* without ownerſhip.

"Clandeſtinely;" in ſecret. The *Retnácara.*

A chattel belonging to the man himſelf, delivered to another without transferring the property, is a depoſit. When one intruſts his own effects to another, through the intervention of a third, the chattel ſo intruſted to an intermediate perſon is a depoſit for delivery. All this muſt be underſtood as already explained. A thing intruſted under ſeal is a ſealed depoſit: both ſorts are mentioned, as a prieſt and a mendicant *are diſtinguiſhed.* "Stolen;" ſeized by thieves. "A pledge;" a thing hypothecated. "A thing borrowed for uſe;" ornaments or the like aſked and obtained for decoration and ſo forth. This is general, comprehending bailments with artiſts and ſo forth. He by whom ſuch a thing is ſold, is a non-owner. Such is the meaning of the text. Conſequently the ſale effected by him is ſale without ownerſhip. This muſt be underſtood as the import *of the text;* otherwiſe, the eſtabliſhing of a technical ſenſe *for the word* aſwāmi (non-owner) would be ſuperfluous, ſince any other than the owner, whether a depoſitary or not a depoſitary, whether a ſeller or not a ſeller, has no ownerſhip. But now there is no difficulty in explaining the term "non-owner," as employed to denote ſale without ownerſhip.

III.

Náreda:—When a thing bailed, or the goods of another loſt *by him* and found *by a ſtranger,* or effects ſtolen, are clandeſtinely ſold, it muſt be conſidered as a ſale without ownerſhip.

The intruſting of one's own effects to another is bailment, as defined by Náreda. It comprehends loans for uſe and the reſt, conformably with the ſenſe of the verb *nihcſhēp,* bail or in truſt; the law of bailments having been extended to loans for uſe (Chap. I. v. 3 & 11;) for there is no difficulty in extending the laws promulged under the title of Sale without Ownerſhip to theſe

these trusts, by the comprehensive sense of the pronoun "it." "Lost;" missed by the owner. The text must be so supplied. Some person travelling on a road, drops a thing, which is not recovered though diligently sought; in such cases, the thing is lost, but not abandoned by the owner: consequently it is not a waif. When that thing is found and sold by any person, it is sale without ownership: and so when a thing is sold which had been stolen, or taken by fraud or force, in the day or night, from the owner's house, without his consent.

The relative (III) belongs to the action: consequently that sale which is made by a non-owner, is a sale without ownership; the term "*sale*," being taken in the neuter sense. Or the relative belongs in construction to the goods of another which are sold: consequently that chattel, appertaining to another, which is *thus* sold, is a sale, or thing sold, without ownership; the word "*sale*" being taken in the passive sense: and many so explain the text.

IV.

VYÁSA:—When the goods of another are sold in the owner's absence, *whether they had been* borrowed for use, bailed for delivery, deposited under seal, or stolen, it is a sale without ownership.

In this text the pronoun stands in the masculine gender, because sale is masculine; as in a former text concerning secret bailments (Chap. I, v. 6) where neither the thing nor the act of depositing it, which might be intended by the pronoun, is masculine, but the word bailment *(nyása)* only *is masculine*. Any property of another, which is sold in the absence of the owner, whether it had been borrowed for use, bailed for delivery, or secretly deposited; or the property of another seized or stolen, which is thus sold, is a sale, or thing sold without ownership; but according to a former opinion, the sale of the chattel which is thus sold, though it belong to another, is sale without ownership. The difference in the construction of the text arises on the word "it" referred to the sale, or to the thing sold. Or

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even on this opinion the ſeeming difficulty may be reconciled, as before.

" Clandeſtinely," in the preceding texts (II and III), denotes the want of the owner's aſſent. Conſequently, if the owner aſſent, a ſale made even by one who is not owner is valid: and ſuch is the current practice.

V.

MENU: — Him who ſells the property of another man, without the aſſent of the owner, the judge ſhall not admit as a competent witneſs, but ſhall treat as a thief, who pretends that he has committed no theft.

Treating him who ſells the property of another man, unauthorized by the owner, as one who is in fact a thief, but pretends he has committed no theft, the judge ſhall not admit him as a competent witneſs; that is, he ſhall never admit his evidence.

CULLÚCABHATTA.

But his puniſhment will be mentioned in another text.

The term of " ſale without ownerſhip " muſt be taken in its derivative ſenſe, a ſale made by one who is not owner; for MENU, the higheſt authority of memorial law, does not ſpecify depoſits and the like, in ordaining, that he who ſells another's property ſhall not be admitted as a competent witneſs; and it is irregular to eſtabliſh another acceptation, when the derivative ſenſe is appoſite. And further, in the text of VRĬHASPATI (II) and the reſt, depoſits and the like are only mentioned illuſtratively: thus, ſhould any powerful perſon ſell a tree or the like, which belongs to ſome weaker man, pretending that it is his; on its afterwards appearing, from a judicial procedure, that he was not the owner, it is *held* a ſale without ownerſhip.

If any one of the parceners ſell property which was inherited by five brothers on the death of their father, is it not a ſale without ownerſhip? and is not this inconſiſtent with the opinion delivered by authors in explaining the following text; namely, that

that the gift, *or ſale*, ought not to be made; but if made, is valid?

VI.

VYÁSA:—A ſingle parcener ought not, without the conſent of his co-parceners, to ſell or give away immovable property of any ſort which the family hold in co-parcenary.

It ſhould not be argued, that, each of the five brothers having dominion over that property, a ſale by a ſingle parcener is not a ſale without ownerſhip. The ſeparate dominion of the five brothers over the ſame property is not admiſſible, according to the opinion of JÍMUTAVAHANA. Nor ſhould it be argue , that, according to his opinion, the dominion of each is eſtabliſhed over the property which each enjoys, or which each will receive when a partition is made: and thus the property ſold by the parcener was actually his; and conſequently there is no difficulty. Were it ſo, another parcener could not ſhare the price of that property. It is not proper to affirm, as conſiſtent with the opinion of JÍMÚTAVÁHANA, that other parceners have no ſhare in the price of undivided property ſold by a brother with whom partition has not been made; but, according to the opinion of lawyers, who contend for the common title of all the brethren in the whole of the wealth, ſurely they are all entitled to a ſhare.

To the queſtion thus propoſed it is anſwered, the term 'joint wealth,' according to the opinion of JÍMÚTAVÁHANA, ſhould be uſed for what is brought into one common tenure; when ſuch property is ſold by any one of the parceners, the price of it is joint property; and in that caſe, what is enjoyed by each, becomes the property of each. Thus is the law demonſtrated. And in this caſe, there is no puniſhment; nor is there a ſale without ownerſhip aſcertained by proof that another's property has been ſold, ſince it is not certain whether the ſeller is or is not the owner: the ſale is therefore valid.

It ſhould not be objected that a moral offence is committed, ſince there is in fact a want of ownerſhip. That is admiſſible;

a moral offence is even denoted by the expreſſion "ought not to be made;" and the ſale of joint property is forbidden, merely in the apprehenſion of a moral offence. In fact, the price of property ſold by any one of the parceners, is enjoyed in common by all. To whom that property, which is ſold, did belong, cannot well be determined, according to the opinion of JÍMÚTAVÁHANA: the dominion of all the parceners over it muſt be aſſerted, like their property in a ſingle horſe or the like.

The opinion of VÁCHESPATI BHATTÁCHÁRYA may be admitted upon the reaſon of the law: if the whole of the joint property be ſold by one of the parceners, the ſale is not valid ſo far as regards the ſhares of the other parceners, but is valid ſo far as regards the ſeller's own ſhare; and if it be ſold with the conſent of the co-parceners, the ſale of the whole is valid. This will be made evident under the title of Subtraction of what has been given.

Should a creditor, ſelling a pledge, apply the produce to the payment of his own debts, what is the law in that caſe; for he has no property in the pledge? It is not *univerſally ſo*. But if he ſell it before the period ordained under the title of Loans and Payment, the ſale is not valid.

VII.

MENU:—Nor, after a great length of time, can he give or ſell ſuch a pledge*.

But he becomes the owner of the pledge at the appointed time.

VIII.

VRĬHASPATI:—After the time for payment has paſt, and when intereſt ceaſes, the creditor ſhall be owner of the pledge†.

And

* Book I, v. cxvii. The text would admit of a different interpretation, which ſeems to be here intended.

† Book I, v. cxv.

And again,

IX.

VRĬHASPATI :—When the debt is doubled by the interest, and the debtor is either dead or has absconded, the creditor may take his pledge and sell it before witnesses *.

If the creditor become owner of the pledge, how can the expression of VRĬHASPATI be pertinent (having received the amount of his debt, he must relinquish the balance †)? for this directs that the remainder shall be relinquished: now there is no relinquishment of any part of the price, when a man sells his own property. It must be understood, that the text above cited (VIII) denotes property in a certain part proportioned to the amount of the debt. Or the creditor becomes owner of the whole pledge, if the agreement were in this form, "should I not redeem the pledge when the debt is doubled, it shall become thy property;" or thus, "should I not redeem it in five years, it shall become thy sole property." But if the agreement run not in such form, the property extends only to a part of the pledge proportionate to the debt. The text bears both senses.

When a piece of land measuring a thousand cubits, or when twenty trees have been pledged without an agreement in such form, if the debt can be liquidated by the sale of half the pledge, shall the whole be sold or not? It is answered, the whole should not be sold; for the sale is only directed for the payment of the debt. It should not be objected, that, were it so, the text directing the relinquishment of the remainder would be unmeaning. When a single copper vessel or the like has been pawned, since a part of it cannot be sold, the sale of the whole is necessary; and it is necessary that a part of the price (namely the surplus) should be relinquished. Nor should it be argued, that, were it so, the creditor being owner of a part only, the sale of the other part would be a sale without ownership. Like the case of undivided brethren, a partial ownership, without property in the whole, is incongruous.

What

* Book I, v. cxxi. 1.   † Book I, v. cxxi. 2.

What then is this partial ownerſhip? It ſhould not be called a concurrent property contemporary with the property veſted in the debtor or in his heir: for in that caſe each would be equally entitled to half the pledge. This is conciſely anſwered by eſtabliſhing an ownerſhip, on the authority of the law, in a greater or leſs value, according to circumſtances.

When the king cauſes the property of any perſon to be ſold, what is the law in that caſe? Why does the king cauſe it to be ſold? By an act of violence; or for the payment of a fine, or of a debt? In the firſt caſe the ſale is not valid.

X.

MENU:—What is given by force, what is by force enjoyed, by force cauſed to be written, and all other things done by force, MENU has pronounced void.

In the ſecond caſe, if he do not cauſe the property to be ſold, how can the amercement or debt be recovered? It ſhould not be objected, that there is no occaſion for his making the ſale himſelf, ſince the purpoſe may alſo be effected by ſelling the property through *the* intervention *of the owner*. It is inconſiſtent with ſettled uſage to ſuppoſe an offence in ſelling the propety in the owner's preſence, if he refuſe to cauſe it to be ſold. Nor is it void, as a thing done by force; for what is done by force without a *ſufficient* cauſe, is alone void; and fines could not otherwiſe be recovered.

Some ground the validity of a ſale made by the king, on his being lord of all, as declared by the text, "All ſubjects are dependent, the king *alone* is independent." But, were it ſo, the king's intereſt and the buyer's intereſt in the thing would be equal; and therefore the ſubject's right could not be vindicated: and further the ſenſe poſitively is, that the ſale of the owner's property ought to be made by the king with the owner's conſent. But, if that owner do not conſent to the ſale of his effects for the payment of a juſt due, let the king compel him to conſent, by blows, or harſh reproof, or other modes authorized by the law. Or, ſhould he

he perſiſt in his refuſal, a reaſonable puniſhment, for the offence of not aſſenting where aſſent is required, is proper.

But if the king, being much hurried, ſell the effects without requiring the owner's attendance, and the owner, afterwards attending, contumaciouſly refuſe to pay what was due, or to acknowledge the validity of the ſale, then that contumacious perſon ſhall be compelled by harſh reproof, or other ſuitable mode, to admit the ſale.

But ſhould he attend and pay what was due, how can the ſale be valid? The king cannot employ violence to render the ſale valid; for an acknowledgement extorted by force would, in this caſe, be void (VIII); that is, it would be void in the caſe of a payment for which no time was ſtipulated. But if a period had been ſtipulated, and his conduct be contumacious after the period has expired, what has been already ſaid concerning the ſale of a pledge is equally applicable to this caſe.

The ſale of a pledge may be valid, becauſe it is a thing actually poſſeſſed; how can other effects, remaining in the owner's houſe, be ſold by the king's permiſſion? It ſhould not be argued that the ſale is valid, becauſe it is made by a perſon not deſtitute of authority, the king being lord of all, and the text of MENU merely declaring void a contract made by a perſon without authority. CULLÚÇABHATTA expounds "a perſon without authority," a perſon not authorized by the father or by the brethren.

XI.

MENU:—A contract made by a perſon intoxicated or inſane, or grievouſly diſordered, or wholly dependent, by an infant or a decrepit old man, or by a perſon without authority, is utterly null.

The law ordains, that the king ſhall not cauſe the property of another to be ſold: but he ſhall enforce payment of a debt, or the like: and the meaning is, that he ſhall induce the debtor to diſcharge it.

How can the property of another, received in pawn, be enjoyed as a forfeited pledge, with the king's conſent, under the words

of the text cited in the preceding book (Book I, v. CXX)? and how can the goods of another be ſold by the king's directions, under the authority of another text (Book I, v. CXXII)? For the goods, though actually poſſeſſed, are the property of another.

If the debtor do not redeem the pledge at the ſtipulated time, it is not required that the creditor ſhould keep the pledge; for the law ſhows that the debtor's property in it is forfeited by his neglect. Let the creditor enjoy it, or cauſe it to be ſold, previouſly acquainting the king for the ſake of reſpect, or of juſtifying the act. To this conſtruction there is no objection: and if this expoſition be propoſed, it is admiſſible.

If a time were ſtipulated, the ſale of the effects with the owner's conſent is valid in law. Therefore it is conſiſtent with the reaſon of the law, that, after the ſtipulated period has expired, ſufficient effects ſhould be attached to provide for the payment of what is due from a perſon who has abſconded, and that they ſhould be ſold after a *reaſonable* delay. But there is a diſtinction in reſpect to land.

Diſquiſition on Property in the Soil.

This earth, created by GOD, became the wife of PRĬT'HU; and afterwards, by marriage and otherwiſe, became the property of ſeveral princes.

XII.

Nerasinha purána:—Thrice ſeven times exterminating the military tribe, PARASU RÁMA gave the earth to CASYAPA as a gratuity for the ſacrifice of a horſe.

By conqueſt, the earth became the property of the holy PARASU RÁMA; by gift, the property of the Sage CASYAPA; and, committed by him to *Cſhatriyas* for the ſake of protection, became their protective property ſucceſſively held by powerful conquerors, and not by ſubjects cultivating the ſoil.

But annual property is acquired by ſubjects on payment of annual revenue: and the king cannot lawfully give, ſell, or diſpoſe

 of

of the land to another for that year. But if the agreement be in this form, "you ſhall enjoy it for years ;" for as many years as the property is granted, during ſo many years the king ſhould never give, ſell, or diſpoſe of it *to another*. Yet if the ſubject pay not the revenue, the grant, being conditional, is annulled by the breach of the condition ; and *the king* may grant it to another.

But if *no ſpecial agreement be made, and* another perſon, deſirous of obtaining the land, ſtipulate a greater revenue, it may be granted to him on his application. Here reaſoning muſt be adduced. For example, the following: it muſt of neceſſity be affirmed, that the cultivator has not an abſolute property in the land ; otherwiſe the cultivator would take the ſixth part of the produce of unclaimed land, which has been obtained as ſuch by another.

XIII.

YÁJNYAWALCYA :—Let the king, receiving unclaimed property, give half to *Bráhmanas* : but a learned *Bráhmana* may keep the whole, for he is lord of all.

2. And the king ſhall receive a ſixth part of unclaimed property occupied by any other perſon.

If the king himſelf receive unowned property any where ſituated, let him give half to *Bráhmanas ;* for the word *dwija* or *twice-born* here ſignifies the *Bráhmana,* as is ſhown by the ſubſequent expreſſion "he is lord of all;" ſince no twice-born man, except the king and the *Bráhmana,* is lord of all ; and MENU declares the dominion of the king and the prieſt over the human ſpecies (XXIV). A learned *Bráhmana,* occupying unowned property, may keep the whole. But any other than a *Bráhmana* or king, occupying unowned property, muſt give a ſixth part to the king, and may take the remainder himſelf.

Muſt the king, receiving from a ſubject the ſixth part of unclaimed property, give half to the prieſt ? The anſwer is, unclaimed property denoting a thing which has no owner, and, when it is occupied by a private perſon, the property by occupancy al-

tering the condition of that thing, the king does not in this caſe receive unclaimed property ; therefore half need not be given to the prieſt.

Since the word ‘ king ’ here denotes lord of the ſoil ; and ſince the cultivator, being owner of that land, is *ſo far* equal to the king, he would be entitled to the ſixth part of the unowned property occupied by him. *The anſwer is*, the word ‘king’ may be explained lord of the ſoil, to exclude another king : but a royal property is ſuppoſed in the uſe of the word ; the cultivator has a ſubordinate uſufructuary property, not a royal property : and SRÍ CRĬSHNA TERCÁLANCÁRA thinks there may be, in the ſame land, property of various kinds, veſting in the king, the ſubject, and ſo forth. It ſhould not be objected, if that be the caſe, why cannot the king give the land to another in the ſame year *for which revenue is paid ?* Becauſe a ſeller or giver may, by ſale or gift, annul his own property, and inveſt another with ſimilar property, but cannot create property of another nature (for a ſale by a ſubject cannot create property of another nature, namely royal property ;) therefore, uſufructuary property being raiſed by a conditional gift to the ſubject, the king cannot again create property *in the ſame thing*, by a gift to another.

But whence is it deduced that ſuch property veſts in the cultivator ? There is no proof of it. His property is not by occupancy ; for, the king being a more powerful owner, his occupancy cannot be maintained : it is not by ſale ; for no ſale has been made : it is not by gift from the king on condition of revenue ; for, were it ſo, his property would be equal to the king's.

If it be ſaid, the king, ſatisfied with the receipt of revenue, does not oppoſe a property by occupancy ; the anſwer is, in that caſe the property would remain, if the huſbandman, not having ſurrendered that land, ſtay even in a diſtant country ; and thus the land could not be taken by another perſon. It is not fit that, property being eſtabliſhed by occupancy while the king was ſatisfied, he ſhould, afterwards becoming diſſatisfied, have power to annul the occupancy or property ; for occupancy, having created a property, immediately ceaſes *to be a mere occupancy ;* and property cannot be annulled without the aſſent of the owner.

Some hold, that the ſubject is inveſted with ownerſhip by a gift from the king on condition of revenue. If he go elſewhere, and

revenue

revenue be not paid, the gift is cancelled by the breach of the condition. It ſhould not be objected that his intereſt in the land would be equal to the king's; for the king's aſſent is not *given* in ſuch a form. Thus, the king aſſenting in theſe words, "let a ſubordinate uſufructuary property be held by thee, while my property remains in this land, which belongs to me;" ſuch property is created as is deſcribed by the terms of his aſſent. Nor ſhould it be objected that in this caſe property is not created, nor is effect given to an exiſtent property, but mere poſſeſſion as of a thing pawned. This would be inconſiſtent with the explanation of huſbandman, as given by CHANDÉSWARA and others; that is, "owner of the field." Nor ſhould it be objected; how can there be property in what is already owned, ſince property reſiſts a concurrent property? SRÍ CRĬSHNA TERCÁLANCÁRA and others hold, that property prevents concurrent property of the ſame nature only: and, under the text which declares wealth common to the huſband and wife *, the wife has property even while the huſband's title ſubſiſts. If it be argued, that, in ſhort, property generally prevents a concurrent property; and the text, which declares wealth common to the huſband and wife, merely authorizes her ſubſtitution for the duties of hoſpitality and the like; and the difficulty being thus removed, there is not, in the caſe ſuppoſed, any property veſted in ſubjects: then the huſbandman would only receive half the produce of the ſoil, ſince the king would be entitled to enjoy the proportion to which *the owner of* the ſoil is entitled. If it be argued, that, obtaining the land by payment of revenue, as a wife is obtained by a nuptial gift, he who raiſes produce from his own ſeed, is entitled to that produce: even in that caſe, as a thing hypothecated to one perſon cannot be alſo hypothecated to another, ſo poſſeſſion of land, already poſſeſſed by one perſon, cannot properly be given to another. A ſpecifick agreemeut ſhould be made, when the land is delivered, that it ſhall be enjoyed year by year, until a greater revenue be offered by another perſon.

XIV.

MENU:—Having aſcertained the rates of purchaſe and

* Book V, v. 415.

and ſale, *the length of* the way, the expenſes of food and of condiments, the charges of ſecuring the goods carried, and the neat profits of trade, let the king oblige traders to pay taxes *on their ſaleable commodities :*

2. After full conſideration, let a king ſo levy thoſe taxes continually in his dominions, that both he and the merchant may receive a juſt compenſation for their ſeveral acts.

3. As the leech, the ſuckling calf, and the bee, take their natural food by little and little, thus muſt a king draw from his dominions an annual revenue.

4. Of cattle, of gems, of gold and ſilver, *added each year to the capital ſtock*, a fiftieth part may be taken by the king; of grain, an eighth part, a ſixth, or a twelfth.

5. He may alſo take a ſixth part of the clear annual increaſe of trees, fleſh-meat, honey, clarified butter, perfumes, medical ſubſtances, liquids, flowers, roots, and fruit;

6. Of gathered leaves, pot-herbs, graſs, utenſils made with leather or cane, earthen pots, and all things made of ſtone.

7. A king, even though dying *with want*, muſt not receive any tax from a *Bráhmana* learned in the *Védas*, nor ſuffer such a *Bráhmana*, reſiding in his territories, to be afflicted with hunger :

8. Of that king in whoſe dominion a learned *Bráhmana* is afflicted with hunger, the whole kingdom will in a ſhort time be afflicted with famine.

9. The king, having aſcertained his knowledge of ſcripture and good morals, muſt allot him a ſuitable

able maintenance, and protect him on all ſides, as a father protects his own ſon:

10. By that religious duty which ſuch a *Bráhmana* performs each day, under the full protection of the ſovereign, the life, wealth, and dominions of his protector ſhall be greatly increaſed.

11. Let the king order a mere trifle to be paid, in the name of the annual tax, by the meaner inhabitants of his realm, who ſubſiſt by petty traffick:

12. By low handicraftſmen, artificers, and ſervile men, who ſupport themſelves by labour, the king may cauſe work to be done for a day in each month.

13. Let him not cut up his own root *by taking no revenue*, nor the root of other men by exceſs of covetouſneſs; for, by cutting up his own root *and theirs*, he makes both himſelf and them wretched.

Let him levy taxes on traders, who ſubſiſt by purchaſing commodities cheap, and vending them at an advanced price. What taxes? To this the legiſlator replies, having aſcertained the rates at which commodities are purchaſed, and at which they are ſold; and having aſcertained the profit, with the charges of travelling, of ſubſiſtence, of tranſport, and of ſafeguard after importation, let him levy taxes: that is, let him take the due proportion of the ſum which remains after defraying all charges. RAGHUNANDANA expounds the terms of the text *(yógacſhéma)* tranſport of goods to be imported, and ſafeguard after importation. Let the king ſo act, that he alſo may receive benefit out of the profits of trade *which remain* after defraying charges, and that the merchant may receive juſt compenſation for his labours.

XV.

PARÁSARA:---Let the king gather bloſſom after

 bloſſom,

blossom, like the florist in the garden; and not extirpate the plant, like a burner of charcoal.

As the florist in the garden plucks blossoms successively put forth, and does not eradicate the flowering shrub; so should the king, drawing revenue from his subjects, take the sixth part of the actual produce: but the maker of charcoal, extirpating the tree, burns the whole plant; let not the king so treat his subjects.
MÁD'HAVA.

XVI.

The *Mahábhárata*:---Let the king gently draw *revenue* from his dominions, as the leech *takes its natural food by little and little.*

The fiftieth part, and other proportions of the profit gained by commerce, must be understood generally of all profit; for no distinction is mentioned.

XVII.

VRĬHASPATI:—Giving a sixth part to the king, a twenty-first part to deities, and a thirtieth part to priests, a man offends not by applying himself to agriculture.

From the concurrence of this text, and no distinction being mentioned, this very rule must apply to the receipt of a part of the gain in all cases: and MÁD'HAVA places the text of MENU under the title of Revenue in general.

"Of grain, an eighth part, a sixth, or a twelfth:" *three* rates, primary and secondary, for the difference of circumstances. Consequently, a greater revenue is permitted in the exigence of distress. But never shall any tax be received from a *Bráhmana* learned in the *Védas* (XIV 7). Shall not the king prevent his cultivating land, and thus there will be no revenue to receive from him? The text declares it infamous, that such a *Bráhmana* should be afflicted with hunger (XIV 8). Therefore the king should assign

assign a suitable maintenance to a learned *Bráhmana*, who has not a maintenance already allotted to him. To confirm this, MENU himself adds: "the king, having ascertained his knowledge of scripture and good morals, must allot him a suitable maintenance;" that is, such a maintenance as may exempt him from falling into contempt. Do not the subjects pay a sixth part as a token of respect, because the king protects them? And, if the *Bráhmana* learned in the *Védas* pay not a sixth part, shall not the king protect him? To those who entertain this doubt, the Sage replies: "the king must protect him on all sides," from thieves and others, not in words merely, but with *exertion of* mind and body, as a *father protects his* son.

To the doubt above mentioned, founded on the mistaken notion that such a *Bráhmana* does not give a sixth part, is it not answered, that he who raises produce, or buys and sells things, gives a part of them; and as the *Bráhmana* learned in the *Védas* acquires merit, of which he gives a part, he also must necessarily be protected by the king?

XVIII.

The divine CÁLIDASA:—The wealth of princes, collected from the four orders of their subjects, is perishable: but pious men give us a sixth part of the fruits of their piety; fruits which will never perish *.

How does it follow that *Bráhmanas* learned in the *Védas* give the sixth part required by the text of VRĬHASPATI? The text cannot be well explained by the gift of a part of the fruits of piety; for that is inconsistent with the concurrent gift of a part to deities and priests. Some refer the text (XVII) to others than a *Bráhmana*: but that is not the opinion of MÁD'HAVA; for, immediately after that text, he mentions the mode in which agriculture may be practised by a *Bráhmana*, and quotes a text of MENU concerning the practice of husbandry by *Cshatriyas* and others. The difficulty may be thus briefly reconciled: if a *Bráhmana* learned in the *Védas*, for his own justification, voluntarily pay

 revenue,

* *Sacontalá*, p. 41, Calcutta edition.

revenue, let the king, receiving it, appropriate it to the uſe of deities and prieſts; but if he pay it not ſpontaneouſly, the king muſt not demand it.

The ſixth part is explained by MÁD'HAVA, one part in ſix. By parity of reaſoning, the rule is the ſame in reſpect of the thirtieth part.

XIX.

MENU:—A ſixth part of *the reward for* virtuous deeds, performed by the whole people, belongs to the king, who protects them; but if he protect them not, a ſixth part of their iniquity lights on him.

Under this text, which includes all claſſes, the king, who protects his ſubjects, receives a ſixth part of *the reward for* virtuous deeds performed by them, although they alſo pay revenue. What parity is there in compariſon with the *Bráhmana* learned in the *Védas*, ſince the people at large give part both of the wealth and merit acquired by them? It muſt be underſtood, that the contribution is equal, or even greater, ſince a virtuous *Bráhmana* learned in the *Védas*, acquiring great merit, gives *a part of a great reward for* many virtuous deeds. A *Srótriya*, or *Bráhmana* learned in the *Védas*, is thus deſcribed:

XX.

DÉVALA:—A prieſt who has ſtudied one *'sác'há* of the *Véda*, or one *'sác'há* with the law of ſacrifice, or with the ſix *angas* or bodies of learning, and who performs the ſix preſcribed acts, is named *Srótriya* learned in law.

The ſix *angas*, or bodies of learning, are *'sicſhà, calpa, vyàcarana, ch'handas, jyótiſh*, and *niructi* *. The preſcribed acts are declared in the following text:

XXI.

* *'Sicſhà*, on pronunciation of vocal ſounds. *Calpa*, detail of religious acts and ceremonies. *Vyàcarana*, grammar. *Ch'handas*, proſody. *Jyótiſh*, aſtronomy. *Niructi*, on the ſignification of difficult words and phraſes. Aſiatick Reſearches, vol. i. p. 341.

XXI.

Menu :—Reading the *Védas*, and teaching *others* to read them, ſacrificing and aſſiſting *others* to ſacrifice, giving *to the poor if themſelves have enough*, and accepting *gifts from the virtuous if themſelves are poor*, are the ſix preſcribed acts of the firſt-born claſs.

Let it not be ſuppoſed that an ignorant *Bráhmana* is not to be reſpected; for Menu, premiſing that a king, though in the greateſt diſtreſs, ſhould not provoke *Bráhmanas* to anger, declares the danger of provoking even an ignorant *Bráhmana*.

XXII.

Menu :—A *Bráhmana*, whether learned or ignorant, is a powerful divinity; even as fire is a powerful divinity, whether conſecrated or popular.

"Let the king order a mere trifle to be paid" (XIV 11) by the meaner inhabitants of his realm (inferior in rank to the prieſt), who ſubſiſt by cultivation and other modes before mentioned, or by handicraft and the like not previouſly mentioned. Another contribution from handicraftſmen and artificers is mentioned in the ſubſequent text (XIV 12). Thus ſome expound the text (XIV 11). But in fact the term uſed in the text intends *petty* traffick, and the profeſſion of a ſinger and the like. In the ſubſequent text, labourers, ſuch as thatchers of houſes and others, and artificers ſubſiſting by work in cane and wood, are intended: as a diſtinction might be ſuppoſed between perſons ſubſiſting by labour or handicraft only, and perſons ſubſiſting by the ſale of the produce of their labour, both are mentioned; but in fact the terms are ſynonymous in the dictionary of Amera. "By theſe, and by ſervile men, the king may cauſe work to be done for a day in each month," employing handicraftſmen and artificers in

thatching houſes, and in working on cane and wood, and employing *Súdras* on ſervile labour. It is neceſſary they ſhould contribute revenue : to lighten the labour, they may pay to the king an equivalent out of wealth gained elſewhere, and the king may hire others for the labour required. Thus, if the attendance of a multitude of artificers be inconvenient from the magnitude of the kingdom, he may levy taxes equal to the value of labour for twelve days in the year.

The king may levy taxes at ſuch rates ; and theſe rates are directed by the law in times void of diſtreſs ; therefore he may not exact a greater revenue : but the prohibition againſt receiving any tax from a learned *Bráhmana*, even in times of diſtreſs (XIV 7), implies, that a greater revenue may be received from others in ſuch times. Let him not make himſelf wretched in the apprehenſion of tranſgreſſing the law, nor anticipating diſtreſs, or providing for his own gratifications, or deſirous of amaſſing wealth, make his ſubjects wretched (XIV 13). Let him not cut up his own root, that is, his life, *by taking no revenue ;* nor the root of others, by exceſs of covetouſneſs : ſuch is the conſtruction of the text. The king ſhould preſerve himſelf for the benefit of others, for he himſelf protects others ; and if he periſh, others would not be protected. On this expoſition, the receipt of greater revenue is improper ; but in times of diſtreſs a greater revenue may be taken. Diſtreſs not being perpetual, if a ſixth part of the crop have been ſtipulated at the time of granting the land to the cultivator, no diſtreſs then exiſting, ſhould diſtreſs afterwards ariſe, it is fit that a greater revenue ſhould be exacted, notwithſtanding that ſtipulation. Such is the induction of common ſenſe.

XXIII.

MENU :—A military king, who takes even a fourth part *of the crops of his realm* at a time of urgent neceſſity, *as of war or invaſion,* and protects his people to the utmoſt of his power, commits no ſin.

From the circumſtances of the times, if confidence cannot be placed in the ſubject, the value of a ſixth part, or other proportion

tion *of the crop,* any-how aſcertained, may be taken, whether the actual produce be more or leſs than was eſtimated: this method is authorized by ſettled uſage, and is indicated *by the text.*

"Others hold, that the king has no property in the ſoil, nor power to diſpoſe of the ſubject's abode, becauſe all have a right in the ſoil; ſince the earth was created for the ſupport of living animals, as expreſſed in the *Srí Bhágavatta*: "*The earth,* which GOD created for the abode of living creatures:" and becauſe MENU has *only* declared, that the ſubjects ſhall be protected by the king.

XXIV.

MENU:—Since the Lord of created beings, having formed herds and flocks, intruſted them to the care of the *Vaiſya,* while he intruſted the whole human ſpecies to the *Bráhmana* and the *royal Cſhatriya.*

Were it ſo, would it not be uncertain how many ſubjects ſhall be protected by what king? To this they reply, that each king ſhall protect the inhabitants of that country, whereof the inhabitants can be exempted from the dominion of every other perſon.

But, in fact, without property in the ſoil, there can be no certain rule for the protection of the ſubjects. Let it not be ſaid, that the rule above mentioned ſuffices; namely, that the ſubjects are to be protected in ſuch an extent of country as can be withdrawn from the dominion of another: for, ſhould the poſſibility of excluding another authority be received as naturally included in the definition, a powerful king, who from tenderneſs omitted to ſeize another realm, would be criminal in not protecting the ſubjects of that realm, ſince he is able to poſſeſs himſelf of it. Nor ſhould it be argued, that the rule directs the protection of ſubjects in that country, from which other authority is actually excluded; for, other authority any how ſubſiſting therein, it might be ſuppoſed that the king was not bound to protect the inhabitants of his own realm, ſo long as that authority was not exterminated.

If it be aſked, what is the rule on your opinion? And if it be argued, that the poſitive neceſſity of ſuppoſing a proprietary right, and the conſequent obligation on the king to protect the inhabitants of that country, of which he is proprietor, ſhould not be affirmed, becauſe ſuch property is not deduced from poſitive precept; *we anſwer*, the excluſion of every other authority is naturally implied, and it is poſitively required that there be "a right of property co-ordinate with the non-exiſtence of a determination not to exclude other authority." It ſhould not be argued, that the obligation of protecting the ſubject need only be ſuppoſed, for it is troubleſome to eſtabliſh another proprietary right. A king's gift of his realm is mentioned in the *Purânas* and in other works ("he gave his ancient dominions to the performer of the ſacrifice"): conſequently a real ownerſhip is veſted in the king. It ſhould not be ſaid, the gift, in the inſtance quoted from the *Purânas*, means a gift of the revenue payable by the ſubjects of his ancient dominions. The gift could not take immediate effect; for the king's property has no foundation to reſt on, ſince the revenue is not yet paid. Nor ſhould it be ſaid, the property will ariſe at a future time, from the paſt exiſtence of the act of aſſenting, which has only a momentary duration*, as in the caſe of a corrody, where a future property is created. A gift of land by the king is mentioned in a text of YÁJNYAWALCYA (Chap. IV, v. 34); and Lord of the earth *(mehipati)* and ſimilar regal titles are *often* mentioned.

Is the earth unowned if the king have no property in it? If it be alleged that the ſoil is not unowned, ſince the ſubject has property by occupancy; it is aſked, cannot the king occupy land? The king may alſo have property in the land by occupancy. Therefore the right, both of the king and the ſubject, in the ſoil, is proved upon the concurrent opinions of CHANDÉSWARA, SRÍ CRĬSHNA, TERCÁLANÇÁRA, and many other authors.

Property muſt be diſcriminated by occupancy: thus, if another invade the land occupied by ſubjects, the king oppoſes him, and land is occupied by ſubjects with the king's conſent. Kings were created by GOD to decide the various conteſts between ſubjects concerning

* This alludes to philoſophical reaſoning on the relation between cauſe and effect.

concerning occupancy and the like, and to maintain juſt proceedings: therefore the king, as lord of his ſubjects, is called lord of men *(nerapati)* By his own power, the king prevents others from ſeizing the land over which he has dominion; by his own power, he legally ſeizes the land over which others reign: therefore he is not ſubordinate to the ſubject.

If a potent ſubject be able, independent of the king, to reſiſt invaders, and even to ſeize the lands of others; ſhall his property be deemed independent of the king? No; for that ſubject ought to be puniſhed by the king, if he tranſgreſs the law: but if the ſovereign be not able to inflict puniſhment on him, even he is king.

Any king who pays tribute to a foreign prince, is nevertheleſs a king, if he do not ſurrender his regal power. But a perſon who receives a village from the king, undertaking to pay the revenue of it in the expectation of benefit to himſelf, is an intermediate owner between the king and the ſubject.

This earth therefore is the cow which grants every wiſh; ſhe affords property of a hundred various kinds; (inferior, if the owner need the aſſent of another proprietor; ſuperior, if his right precede aſſent;) while ſhe deludes a hundred owners, like a deceiving harlot, with the illuſion of falſe enjoyment: FOR, IN TRUTH, THERE IS NO OTHER LORD OF THIS EARTH BUT ONE, THE SUPREME GOD.

The ſubject's property in the ſoil is weaker than the king's, for the ſubject is weaker than the king; but it is founded on the reaſon of the law, and on ſettled uſage: therefore the land of one ſubject ought not to be ſold by the king to another. But how can this ſale be ſale without ownerſhip, ſince the king is owner of the land, as well as the ſubject? It ſhould not be affirmed, that the ſale made by one who holds not ſuch property as is conveyed by the ſale, is ſale without ownerſhip; for this is inconſiſtent with the opinion of thoſe who contend for a property in the ſubject dependent on a grant from the king. Thus, according to that opinion, the ſubject's property is founded on a grant from the king as ſuperior lord. But, what difference is there in the effect of a gift or ſale? According to the opinion, wherein it is contended that the ſubject's property depends on the gift of the king, ſo long as the inferior property is not granted, the land has only

only one owner: afterwards, a double property arifing, an owner may annul his own property, but not the property of another perfon; elfe, why could not the fubject annul the king's property, by felling his own land? Accordingly, the fpecifick affent of the owner being the caufe of annulling property of the fame nature, the king cannot annul an inferior property: and this very maxim may be maintained on the opinion even of thofe who contend for a property by occupancy, on the authority of the text which defcribes the earth as the abode of living creatures. According to this opinion, wherein property by occupancy is maintained, if any fubject, occupying land, after fome time go to a diftant country without furrendering the land, can no other perfon take the land; fince, without his furrender of it, his property is not annulled? The meaning of the text which defcribes the earth as the abode of living creatures, is pofitively this; the property is his who ufes the land where he refides, and while he ufes it: and thus, when land belonging to any perfon is fold by the king, it is a fale without ownerfhip.

XXV.

Cátyáyana:—Let the judge declare void a fale without ownerfhip, and a gift or pledge *unauthorized by the owner*.

It muft be underftood from the proximity of the terms, that the gift or pledge is made by one who is not owner of the thing. Or the fuffix is omitted for the fake of the metre. "Declare void;" that is, the buyer having received back the price, the owner recovers his chattel.

XXVI.

Náreda:—The owner, finding a thing which had been fold by a ftranger, fhall recover it.

"Finding;" the term is fo explained in the *Retnácara*.

The

The owner ſhall recover his own property, ſold by a ſtranger, or one who is not owner of it: blame is imputable to the buyer; it is imputable to him becauſe he bought not publickly, *but bought the chattel* without acquainting the king or his officers (XXXVII). If it had been ſtolen by a thief, he muſt reſtore the chattel if the thief be not found, as will be ſubſequently noticed.

XXVII.

MENU:—A gift, or ſale, thus made by any other than the true owner, muſt, by a ſettled rule, be conſidered in judicial proceedings as not made.

How is it called a ſale, for the word "ſale" implies the act of annulling former property upon the receipt of a conſideration; now the former property cannot be annulled by the act of a ſtranger? The word "ſale" is here employed in a ſecondary ſenſe, denoting the delivery of a thing, with the previous receipt of a conſideration.

But ſome argue that ſale is the act of aſſenting to the annulling of former property, with the previous receipt of a conſideration; and even gift is the aſſenting to the annulling of former property, but without the receipt of a conſideration: and this they hold to be the ſenſe of the verbs 'ſell' and 'give.' Thus, by the authority of the law, in the caſe of a perfect gift or ſale, the property of the former owner is annulled by his aſſenting to the annulling of it: but, in the preſent caſe, the former property is not annulled, though ſuch aſſent be given, *but given by a ſtranger:* for a ſtranger's aſſent cannot annul property: on the contrary, the giver or ſeller ſhall be puniſhed. The owner's aſſent to the annulling of his own property is the cauſe of *his* property being annulled; and *his* aſſenting to another's property is the cauſe of another's property; not generally any aſſent to the annulling of former property, and any aſſent to the raiſing of a property in another: for the cauſe and effect would be interchangeable. Thus, on that opinion, the gift or ſale is truly the cauſe of annulling a *former* property, and inveſting another with it: becauſe gift is the aſſenting to veſt a property in another, *thereby previouſly* annulling

annulling *a former* property; and ſale is the ſame, but with the previous receipt of a conſideration.

This opinion is contradicted, becauſe it would be inconſiſtent with the text; "a gift or ſale, thus made, muſt be conſidered as not made" (XXVII). When a gift or ſale ſubſiſts, though the aſſent was given by a ſtranger, how is it conſidered as not made? With reference to this queſtion, authors write, that gift is a relinquiſhment producing the effect of veſting property in another, after annulling one's own property.

In the gift of another's goods, there is not ſuch a relation between cauſe and effect as can produce a *real* gift: nor does the law expreſs, that fruit is obtained by the gift of one's own property; for "his own" is not ſpecified in the text, "he who gives land, obtains land." It therefore follows, that "not made" (XXVII) may be explained, ſimilar to *a gift* or *ſale* not made, in as much as it produces no fruit. Another expoſition will be mentioned in the fifth book, On Inheritance. The conjunctive particle, in the text of CÁTYÁYANA (XXV), is employed to comprehend things not mentioned, namely barter and the reſt. Conſequently the ſenſe in effect is, 'by the aſſent of one who is not owner, another has neither right of property nor of poſſeſſion.'

What is the rule if the land of a ſubject be ſold by the king? Why does the king ſell it? Does he ſell it by an act of violence, or to recover an amercement or the like? In the firſt caſe, it is null (X): and, according to the opinion of thoſe who hold that the king, and not the ſubject, has property in the ſoil, there is no ſale in the caſe ſuppoſed; for there is no former owner but the king; and the king, ſelling the land, does not relinquiſh his own right: therefore, to give poſſeſſion to another occupant, and to remove the former occupant after ſatisfying him, ſome conſideration muſt be given: if he, being ſatisfied, accept it, in that caſe there is no diſpute; but if he refuſe it, poſſeſſion given to one, of a thing already poſſeſſed by another, is invalid, like the hypothecation of a thing which was already pledged to another perſon.

XXVIII.

YÁJNYAWALCYA:— In all *other* conteſted matters, the

the lateſt act ſhall prevail; but, in the caſe of a pledge, a gift, or a ſale, the prior contract has the greateſt force.

It ſhould not be argued, on the ſuperior force of the earlieſt contract, as thus ordained by YÁJNYAWALCYA, that it may be true of pledges; but the ſuperior force of the lateſt act ſhould be affirmed in this caſe. The parity of this caſe and of the caſe of a pledge is reaſonable; otherwiſe, why ſhould not the king daily grant the ſame land to various ſubjects? Nor can this objection be reconciled to the law. This ſeparate head of judicial procedure being adopted, becauſe the delivery of land by the king to the ſubject is not included under the head of conteſts on boundaries, the law of pledges muſt be extended to it, by parity of reaſoning. Or it may be anſwered, ſuch a bad expoſition ſhould not be admitted. Every forcible act is void: but if force be not employed in this caſe, *the act is valid*; for every man has legal capacity for a gift or ſale of his own property. But it would follow, according to the opinion mentioned, that the ſeeming ſale of the ſubject's land by the king is valid: the ſubject therefore does not receive its price; it is received by the king *in his own right*: and in that caſe, an amercement is not recovered from the ſubject *by a ſale of land*; and the king incurs a taint of ſin. But, on the other opinion, a ſale forcibly made by the king is void.

In the ſecond caſe *(where land is ſold to make good an amercement or the like)*, according to the opinion, wherein the king's ſole property is maintained, the amercement is not recovered; as has been already mentioned. According to the other opinion, there is no *expreſs* ordinance for the ſale of land belonging to ſubjects who are miſſing, after the period for *the* recovery *of what is due from them* is paſſed; but the reaſon of the law *authorizes the ſale*, ſince an amercement or the like could not otherwiſe be recovered: therefore the king ſhould afterwards compel the owner to conſent. But, if the owner be preſent, the ſale ſhould be made with his conſent; or, if he withhold his conſent, then other puniſhment is proper: but, ſince puniſhment cannot be inflicted on abſent perſons, it is fit their property ſhould be ſold. When the ſale has been completed by the king, and the ſubject immediately attends, bringing the amount *due from him*; then indeed the ſale made

made by the king is void, for the owner's property is not forfeited. The king cannot forcibly compel him to admit *the sale*, saying, "this property has been delivered by me to such a person; thou must therefore confirm the sale, for I will not accept the amount." But if the owner do not then attend, this sale *assumes* the form of a punishment for his offence. Else, inflicting other punishment, let the king release his property. Thus some *expound the law*. It is declared more fully under the title of Contests on Boundaries. To enlarge in this place would be superfluous.

It has been said, that the buyer shall receive back the price paid, and the owner shall recover his property: shall the owner repay the price?

XXIX.

Yájnyawalcya:—*The buyer* is justified by producing the seller: the owner recovers his property, the king receives a fine, and the buyer receives back the price from him by whom the thing was sold.

The text has been already expounded in the first book on Loans and Payment. (Book I, Chap. ii, Sect. 3, Art. 3.)

According to the opinion of 'Súlapáni, the buyer is justified by producing the seller; and the owner recovers, or obtains possession of, his own property. According to Váchespati Bhattácharya, he recovers the right of property. A thief having acquired a property by occupancy, the owner's property has been annulled, but is now revived under the authority of the text; "the owner recovers his property."

From whom does the king receive a fine? From the person subsequently mentioned, namely him by whom the thing was sold; and the buyer receives back the price from the same. The property in the thing is revived, like property annulled by the semblance of a gift.

This text being placed under the title of Sale without Ownership, and the expression "the owner recovers his property," not

being

being otherwife pertinent, the text muft be underftood as intending fale without ownerfhip.

XXX.

VRÍHASPATI:—When the feller has been made appear, and has been condemned in the law-fuit, let the judge caufe him to pay the price to the buyer and a fine to the king, and reftore the property to its owner.

When he has been condemned in the law-fuit, (when it is proved that he fold the thing, and was not the owner;) he fhall be compelled to repay the price, &c. not upon a fimple affertion.

Here, payment of the price to the buyer being required, what price fhall be paid; the price actually received, or the prefent value of the thing?

XXXI.

NÁREDA:—In a cafe of fale without ownerfhip, the feller muft reftore the thing to the owner, and pay to the purchafer the price for which it was fold, and a fine to the king, as directed by law.

This contradicts the childifh fuppofition that the buyer is entitled to the thing, and the owner to the price only; for the fale is void. "The price for which it was fold;" the price agreed on at the time of the fale, and received by the feller. If any perfon fteal and fell a cow, and afterwards the owner, feeing the cow, claim her; when the price is to be repaid to the buyer, that very price fhall be recovered, though the value may have been diminifhed by the cow being worn by age: fhall not the price be therefore recovered, even though the cow have died, if the purchafe be proved by evidence; for the buyer has a right to the price, fince it was a fale without ownerfhip? It may be fo: but this diftinction, founded on the reafon of the law, is juftly inferred: if the cow become ufelefs by age, ftill the real owner

muft

muſt receive that very cow, and the buyer receive the price he paid; but if the cow become uſeleſs, through the buyer's fault, from want of food, or from exceſs of labour, the buyer muſt receive leſs than the price, and the difference muſt be paid to the owner of the cow: it is not the ſeller's gain. If the cow have died by mere accident, the recovery of the price is the buyer's gain, and the owner ſhall not obtain a cow from the buyer; for his cow is loſt to him, and the law does not ſhow that any equivalent ſhall be given. This is pertinent on the opinion of 'SÚLAPÁNI.

But ſale without ownerſhip is eſtabliſhed with difficulty on the opinion of thoſe who aſſert that a thief has property in the thing ſtolen; for, *according to that opinion,* a thief has ownerſhip. It is thus *reconciled:* the thief's ownerſhip ceaſing when the cow is recognized by the real owner, it then becomes ſale without ownerſhip. If it be ſo, is not every ſale a ſale without ownerſhip? for all ſellers, by the act of ſelling, become non-owners; ſince perpetual ownerſhip, *even after alienation,* is no where admitted. Nor ſhould it be argued, that "owner" may be here underſtood in the triple ſenſe of actual owner, of him who annuls that ownerſhip by ſale or the like, and of him who was not previouſly the owner; for property is annulled by a ſale made even by a thief. To the queſtion thus propoſed, the anſwer is, No; for there is no difficulty in ſuppoſing an owner different from a thief to be poſitively intended by the word "owner," in the expreſſion ſale without ownerſhip, *or ſale by one who is not the owner.* Of what uſe is this ſuppoſition? for the difficulty may be removed by not admitting the thief's ownerſhip: and the objection is anſwered by aſking, how can property ariſe without acquiſition by an owner? The following text ſhows that property does veſt in a thief:

XXXII.

NÁREDA and the *Viſhnu-dhermóttera:*— What is acquired by ſervile attendance, gaming, theft or the like, or by diſguiſe, robbery, or fraud, all that is called property.

Former owner, *or poſſeſſor*, in a text which will be quoted from VRĬHASPATI (XXXIII), muſt have ſome meaning; but if thieves have not ownerſhip, the word "former" would be unmeaning, ſince there would be nothing to which it could be oppoſed. Accordingly, if a perſon, having bought at a high price effects ſtolen, is diſſatisfied *with his purchaſe;* and, after the period limited by law *for the reſciſſion of purchaſe*, diſcovering that this ſale, having been made by a ſtranger, is void, wiſhes to return the thing; it is not to be returned, even though the owner of the thing, who had not diſpoſed of it, be dead. Such is the rule laid down by VÁCHESPATI BHATTÁCHÁRYA. According to his opinion, if a cow, which had been ſtolen and ſold, die, it is loſt to the buyer; for it is the loſs of a thing poſſeſſed by him as property: therefore, in that caſe, he ſhall receive the price *from the ſeller*, on delivering an equivalent *to the former owner;* and, in the caſe of a thing ſtolen, the former owner receives an equivalent, under the authority of the law, if the original thing be loſt.

But, according to the opinion of 'SÚLAPÁNI, property, in the text of NÁREDA (XXXII), intends the power of diſpoſing of the thing at pleaſure; and the word "former" is employed in the text of VRĬHASPATI, in oppoſition to the thief and the buyer, who are ſecondary owners, in as much as they perform acts of ownerſhip. It is a bad rule, in the caſe of effects ſtolen and ſold, that a buyer, diſcovering the theft, and deſiring to return the effects, may not return them. Thus a buyer diſcovering the theft, and deſiring to reſtore the effects, but forbidden by the king or the arbitrators, keeps the effects and returns to his houſe; after ſome days the owner comes and claims the effects, and the thief, who had clandeſtinely ſold them is dead; in this caſe the effects are the former owner's, and the buyer, though not in fault, would be a loſer by reſtoring the effects without receiving the full price. He does not incur blame, wherefore he ſhould loſe half the price, as in the caſe even of a thing publickly bought; for, on diſcovering the theft, he was willing to return the effects.

Some hold, that there is no difficulty, if the producing of the ſeller (XXIX) be explained diſcovering the theft of the ſeller, that is, making it known to the king's officers, or to arbitrators or the like. Therefore, in this caſe, the buyer informing the king that the ſeller is a thief, may recover the price. No dif-

ference results from the two opinions; but, the text of NÁREDA being the sole ground for admitting *such* property, the practice, exhibited in explaining the opinion maintained by VÁCHESPATI BHATTÁCHÁRYA is bad. Is there not a difference in the result of these opinions; since, according to 'SÚLAPÁNI, it is not the buyer's loss, if the cow, which had been stolen and sold, die; for it is not the accidental loss of what was possessed by him as property; but, according to VÁCHESPATI BHATTÁCHÁRYA, it is the buyer's loss, for it is the loss of what was possessed by him as property? No; for, the sale being null, because it was a sale without ownership, it is fit, even on the opinion of VÁCHESPATI BHATTÁCHÁRYA, that the loss should fall on the thief. Consequently, the cow being dead, there is no present opportunity of investigating the property; but, the price not being lost by *the same* accident, the buyer has a right to it. According to the opinion of VÁCHESPATI BHATTÁCHÁRYA, if the price of the thing sold be fortuitously lost, and it afterwards appear to have been a sale without ownership, is it not improper to investigate the property, and require compensation, since the money is lost? Even according to the opinion of 'SÚLAPÁNI, is not the thief unaccountable, since it was lost, while it *yet* belonged to the buyer? and, in a similar case, if the cow be living, shall she not be received back by the thief, since the sale is void, being made without ownership? If a thing bailed to an artist, and not restored by him, be lost by accident, it is the owner's loss, for there is no fault in the artist; but if it be lost after the stipulated period *for repairing it, &c.* it is the artist's loss, for his exceeding the stipulated time is a fault (Chap. I; v. 53). So the thief, committing a crime by selling the goods of another, must repay the price even though the goods be lost: but if they were bought with previous knowledge of the theft, the price of those goods, should they be lost by accident, is not to be repaid; for both are criminal. Even in the case of the death of a cow, which had been stolen and sold, the owner shall recover an equivalent from the thief; for he is criminal, as an artist who exceeds the stipulated time is faulty. If it be said, the thief is criminal in regard to the owner, because he may be thus accused, "wherefore has my cow been delivered to another?" But how is he criminal in regard to the buyer, to whom he delivered the

cow;

cow; for he made a contract, receiving the price on the delivery of the thing? Even the buyer can arraign him. For example: "he is dishonest in having taken my money, giving me another's property, which cannot long remain, and which is "*therefore* unfit for my intended uses: why did he not keep it "at home?"

This opinion should be received as the settled rule: the several opinions, previously noticed, were mentioned for the sake of illustration. To enlarge would be superfluous.

Sect. II.—*On the Production of the Seller, and Justification of the Buyer.*

XXXIII.

Vrĭhaspati: — When the former possessor shall come and prove his property in the thing bought, let the purchaser produce the seller; for thus may he clear himself.

The *Retnácara* explains "the former possessor," the person who was owner of the thing before the theft, or who had power to dispose of it at pleasure: "the principal" here signifies the seller. The legislator means the principal in the sale.

XXXIV.

Yájnyawalcya: — He who has purchased *the goods of another*, which had been lost or stolen, must, *when accused by the owner*, cause the thief, *or other person who sold them*, to be apprehended:

 but

but if *circumſtances of* time or place prevent *his apprehenſion*, the buyer muſt himſelf reſtore the goods.

He who has acquired, or obtained by purchaſe or the like, the goods of another loſt and ſeized or ſtolen, being accuſed by the original owner, (this ſhould be ſupplied in the text,) muſt cauſe the man who ſtole them, in other words the man who ſold them, to be apprehended by the king's officers: he muſt cauſe him to be ſeized. But if he cannot cauſe him to be apprehended, being prevented by circumſtances of "time or place," that is by the death or abſconding of the ſeller, or the like; in that caſe, the buyer muſt himſelf reſtore the goods, when the owner's property in them is proved. Such is the expoſition approved by CHANDÉSWARA. "Cauſe to be apprehended," is explained by ſome, ſhow, *or point out;* for the verb *grah*, take, is uſed in the ſenſe of know.

The goods muſt be thus reſtored, without *receiving back* the price, if the purchaſe was privately made; but not ſo if the purchaſe was openly made.

XXXV.

CÁTYÁYANA:—Either let a man make an open purchaſe *in an aſſembly of people*, or let him produce the ſeller; but let time be given him for the production of the ſeller, according to the number of *yójanas*.

2. Having offered to produce the ſeller, if he afterwards tender proof of a fair ſale, let the judge require the production of the ſeller; there is no uſe of ſuch proof *of a fair ſale* by the defendant, *who firſt offered another juſtification.*

By proving an open purchaſe, or by producing the ſeller, let the buyer vindicate his innocence. CHANDÉSWARA.

Con-

Consequently the alternative of an open purchase and production of the seller denotes mutual opposition. It follows, that the same exemption from making good the effects himself, which the buyer obtains by producing the seller, is also *allowed* in the case of an open purchase. Let him prove his innocence, and therefore be exempt from penalties.

"An open purchase;" a purchase known to arbitrators and to the king's officers. "Let time be given him for the production *of the seller*:" if the seller reside in a distant country, he cannot be produced at the instant; let time be allowed for that purpose, and let the recovery of the thing be so long deferred, "according to the number of *yōjanas*:" let so much time be given as is requisite to travel, going and returning so many *yōjanas* as is the distance to the seller's residence.

"Having offered to produce the seller, &c." (XXXV 2): the buyer, when first accused, having said, "I will produce the man from whom I received the thing," afterwards says, "many persons know of my purchasing it;" in that case, his first and second plea differing, on which plea shall the decision rest? To that question the answer is this: "there is no use in his proving an open purchase;" that is, upon such proof he will not be held innocent: *let the judge* require the production of the seller. This interpretation agrees with the *Retnácara*.

It must be considered, that the text provides against dishonesty. Therefore, if the buyer, first undertaking to produce the seller, go to fetch him; but the seller happening to be dead, the buyer returns and says, "the seller is dead, but all the witnesses named know that the thing was bought from him;" in that case, if all the circumstances be proved, the decision must depend on the fairness of the sale; but otherwise, it depends on the production of the seller.

According to VÁCHESPATI MISRA, the text merely exhibits the natural inference. Thus, when the buyer says, "I bought this thing of DÉVADATTA, and all know the purchase and the commodity bought;" the seller must be apprehended, for thus may the sale be proved. But if the seller be not forthcoming, the justification of the purchase must depend on its publicity: and, according to this opinion, the necessity of proving a fair

 purchase

purchaſe ſurely follows in caſe of the ſeller's death, as above mentioned.

If the buyer firſt plead that the ſale is publickly known, and afterwards offer to produce the ſeller, how is the law ſettled in this caſe? Since the text requires the production of the ſeller, when the ſale is pleaded after offering to produce the ſeller, and ſince the circumſtances of the caſe are here reverſed, therefore proof of a fair ſale ſhould be required.

If it be argued, that the reaſon of the law ſhows the production of the ſeller to be requiſite in all caſes, for MISRA *ſays*, it is by producing the ſeller that a fair ſale may be proved; but, according to the *Retnácara*, the firſt plea ſhould be tried:—ſome reply, that the reſult of the different expoſitions of both authors is the ſame, and it ſhould be ſo admitted: thus, if the ſale be firſt pleaded, and the production of the ſeller be afterwards offered, both proofs ſhould be received; for there is no ordinance for rejecting either proof, nor is it conſiſtent with the reaſon of the law.

What ſhall be the deciſion if the defendant, failing in one proof, ſucceed in the other? The defendant, any-how clearing himſelf from ſuſpicion of theft, gains his cauſe; and this may be effected by either proof. By failure in which of them could his ſucceſs be prevented, ſince both are ſeverally declared by the law to be *admiſſible* proofs in juſtification of purchaſe?

What is the mode of proceeding, when a real thief, employing various methods to conceal the theft, advances ſeveral pleas at ſeveral times? In reply it is aſked, how is the theft aſcertained, unleſs he fail in the proofs required by the law? If it be ſaid, this is inconſiſtent with the expoſition of the text of CÁTYÁYANA according to the *Retnácara*, for proof of a fair purchaſe is in ſuch caſe pronounced inadmiſſible; it is anſwered, the expoſition of the text ſhould be conſidered as ſuppoſing knavery; therefore, when knavery is obſerved, the cauſe muſt be tried on the firſt plea; but if no knavery appear, it may be tried upon any of the pleas: ſuch is the true ſenſe of the text according to the *Retnácara;* and the production of the ſeller and the proof of a fair ſale are not excluſively intended by the text.

Here it ſhould be noticed, that when the cauſe is tried, if the defendant

defendant be able to write, the judge ſhould require all his pleas in writing, and a written declaration that he has no other plea: afterwards, ſhould he offer another plea, he is evidently diſpoſed to knavery. This we hold to be proper.

XXXVI.

MENU:—He who has received a chattel by purchaſe in open market, before a number of men, juſtly acquires the abſolute property by having paid the price of it.

The place where things are ſold *(vicriyantē)*, is the market *(vicraya)*: he who there buys a ſaleable commodity in the preſence of perſons tranſacting any buſineſs, thereby juſtly acquires the abſolute property, juſtified by purchaſe from one who ſells without ownerſhip, becauſe the ſeller receives the price from him. So CULLÚCABHATTA, who reads in the third meaſure of the verſe, *viſudd'ham hi* inſtead of *viſudd'hah ſyát*. He makes it evident that the word *vicraya*, formed on a ſuffix denoting locality, ſignifies a market. He conſiders this text as bearing the ſame import with the text of MARÍCHI (LV). "Received by purchaſe:" purchaſe *here* intends receipt of a thing for a price paid under the name of purchaſe.

It appears from this interpretation, that the buyer is not faultleſs if the purchaſe was made in any other place than an open market, and before credible perſons, who are not officers employed by the king. But ſimple men thus interpret the text; "He who has received a chattel by ſale, as the cauſe *of receipt*, before a number of reſpectable perſons, is juſtified by the known open purchaſe, and legally acquires the property." The ſuffix of the word *viſuddha* is in the neuter ſenſe. But, reading *viſuddhatwam* inſtead of *viſuddham hi*, the ſenſe is obvious. In the text (LV), a place of trade is mentioned approximately; for ſales and purchaſes can hardly be tranſacted any where but in a place of trade: and thence it is deduced, that a purchaſe ſecretly made, in a man's own houſe or the like, is defective. The word *cula*, ſignifying a number of perſons of the ſame rank,

in this text conveys a limitation: consequently men equal in rank, being respected persons, are meant. The term is explained by AMERA, genus, or multitude of similar beings. It is used by accurate speakers in the sense of near neighbours. According to this opinion, a purchase any where made before respectable persons, is an open purchase; and there is no fault in the buyer. Consequently the meaning is this: neither the defect of a private purchase grounded on the want of evidence, nor the suspicion of having purchased the chattel knowing it to have been stolen, exists in the case of a purchase made before respectable persons; and, if a purchase made after registering the name of the seller and of his ancestors to the third generation, and his place of abode, be faultless, and not otherwise, then it is proper that the purchase should be made in the presence of the king's officers; and, the king's officers being stationed for the *government of the* country at large, it is proper, for the purpose of avoiding much trouble, that the purchase be made in a place where many purchases and sales are transacted, namely in a market. But no ordinance appears to prove this clearly. The difference between the two opinions should be fully examined by the wise.

CHANDÉSWARA reads, " he is justified by the purchase " *(sa visudd'has tu)*, and explains the text (XXXVI) " he who receives a chattel in open market, before an assembly of respectable persons conducting judicial procedure, is legally justified by the purchase, and obtains the property *from the seller*." Consequently, according to his opinion, the rule does not direct the purchase to be made before the king's officers; for arbitrators, as well as officers employed by the king, conduct judicial procedure, since this term denotes the trial of causes: and the epithet of respectable would be superfluous, if king's officers were intended by CHANDÉSWARA in the expression " conducting judicial procedure;" for persons not respected are not appointed by the king to be his officers: their appointment would be useless, since such persons are not capable of conducting affairs. Neither is the superiority of king's officers, appointed for other business, above principal *Bráhmanas* and the like, consistent with the reason of the law; and the same sense is intended when persons conducting judicial procedure are mentioned, as when king's officers are specified.

Why

Why not rely on the derivation of the word in the ſenſe of locality? This objection is not proper; for derivatives in this form, from words of this claſs, are regularly uſed in another ſenſe. But if that derivative ſenſe be admitted, in the apprehenſion of the word being otherwiſe ſuperfluous, ſale is inferred from what follows. Conſequently, market is mentioned as an inſtance only: if a purchaſe be made before principal perſons, there is no diſtinction, whether it be in a market, or in any other open place; and, according to this opinion, the text muſt be ſupplied, "he is legally juſtified by *the fairneſs of* the purchaſe." But practice, in ſome places, juſtifies any ſale made in the midſt of the town and in the preſence of reſpectable perſons.

It muſt be conſidered that the king's officers are few, and reſpectable perſons are ſurely numerous in every town. Conſequently, if it be directed that every ſale be made in the preſence of thoſe few perſons, they become in a manner acquainted with the ſellers by frequently ſeeing them: but if made in preſence of many different perſons, theſe, being only now and then preſent at ſales, do not become acquainted with the perſons of ſellers: therefore it is proper that purchaſes be made before the king's officers. If the king, conſidering this, forbid ſales to be otherwiſe made; then, conſidering the king's command as cogent, this form ſhould be obſerved, without queſtioning whether it be, or be not, ordained by the law; and if the buſineſs of buying and ſelling be not obſtructed by this formality, then alſo it ſhould be obſerved. To expatiate would be ſuperfluous.

XXXVII.

Yájnyawalcya:—The owner ſhall recover his property ſold by a ſtranger: blame is imputable to the man who buys not publickly; and he incurs the guilt of a thief, if he buy from a very low man, in a ſecret place, at a very cheap rate, and at an improper time.

If the purchaſe be clandeſtine, blame is imputable to the buyer: ſuch

ſuch is the conſtruction. "If he buy from a very low man," &c. is a diſtinct phraſe. CHANDÉSWARA thus comments on the text; "from a very low man," not likely to be the owner of that chattel: "at an improper time," not at the proper hours of ſale. Conſequently he who buys from a very low man, clandeſtinely, at a very cheap rate, diſregarding *proper* time, is a thief: ſuch is the ſenſe of the phraſe.

Is a purchaſe made under any one of thoſe circumſtances puniſhable as a theft, or a purchaſe made under all thoſe circumſtances? Not the firſt; for "in a ſecret place" would be ſuperfluous, ſince the ſame reſults alſo from the preceding phraſe; and even a purchaſe made before the king, at an improper hour, would be criminal. Not the latter; for a purchaſe made at a proper time, even though at a very cheap rate, from a very low man, and in a ſecret place, would be faultleſs. To the queſtion thus propoſed the anſwer is, this half of the text ſhows defects incident to purchaſe though proved; therefore each of the circumſtances mentioned are cauſes of defect. "In a ſecret place, at an improper time," are diſtinguiſhed: therefore a purchaſe made in the middle of the night, even in preſence of the king's officers, is defective; for even thoſe officers are not reſpectable, conſenting to the ſale of effects which they know to have been ſtolen. A ſecret purchaſe is therefore ſeparately mentioned to denote ſuch a diſtinction.

It muſt be conſidered, that there is no offence, if it be fully aſcertained by five reſpectable perſons, that the thing was given to this low man by ſome conſiderable perſon; and if urgent neceſſity be fully proved, there is no offence in a voluntary ſale, even at a very low price; nor is there any offence on the part of the buyer, even though the purchaſe be made in the middle of the night, if the thing was thus ſold from apprehenſion of the ſeller's kinſmen, but in the preſence of honeſt and reſpectable perſons; and even in the caſe of a purchaſe privately made, if the ſeller acknowledge the ſale and the buyer's innocent intention, there is no offence. The king, from his own judgment, ſhould apply to each caſe what agrees with the reaſon of the law; for, "if no deciſion were made according to the reaſon of the law, there might be a failure of juſtice."

XXXVIII.

NÁREDA:—He who buys any thing from a ſlave without authority from his maſter, from a man not of a good character, in private, at a very low price, and at an unfit hour, becomes an accomplice of the man who ſtole it.

If a ſlave intruſted with a chattel for tranſport or cuſtody, having it in his power, ſell it, he is a thief; and ſo is the buyer alſo: but if the owner authorize the ſale, there is no offence. It muſt be conſidered, that, on whatever occaſions (for the ſupport of the family or the like) a debt contracted by a ſlave would be payable by his maſter, the ſale of his maſter's property, for the ſame purpoſes, is valid. The expreſſion "without authority from his maſter," intends a caſe not attended with ſuch circumſtances: and the ſame ſenſe ſhould be aſcribed to the text of MENU; "*A contract made by a perſon without authority is utterly null*" (XI).

"Slave" is here employed in the general ſenſe of any dependent perſon: therefore a purchaſe made from a ſon or the like, is defective; but if a man buy with the knowledge of the owner's having authorized the ſale, there is no offence.

XXXIX.

CÁTYÁYANA:—The defendant, not clearly proving an open ſale to him, or not pointing out the ſeller, ſhall be made to deliver the thing claimed and to pay a fine.

Juſtification of the purchaſe conſiſts in the proof of *an open* ſale. He ſhall be made to pay a fine, as a thief. In this caſe, the buyer is not juſtified: MENU propounds the fine which the king receives, as declared in the text of YÁJNYAWALCYA (XXIX).

XL.

MENU :— If indeed he be a near kinſman of the owner, he ſhall be fined ſix hundred *panas ;* but if he be neither his kinſman, nor a claimant under him, he commits an offence equal to larceny.

" Shall be fined " *(avahárya),* ſhall be amerced. " A near kinſman of *the owner* himſelf " *(ſwánwaya) ;* a ſon or other *near* relation of the owner, " Six hundred ;" *panas* muſt be underſtood. " Not his kinſman ;" not related to the owner. " Not a claimant under him " *(anapaſara) ;* not having taken it *by authority of a kinſman :* the taking of it is the removal *(apaſara)* of it from the houſe of the owner. Hence, he who ſells the property of another, being related to him, ſhall be fined ſix hundred *panas :* but if that ſeller be neither related to the owner, nor become, through a kinſman of the owner, receiver of that chattel taken from the houſe of the owner, but himſelf be the taker of it, he ſhall be puniſhed as a thief: if the embezzlement of the chattel be the act of another, and the ſeller be unallied to the owner, he ſhall be fined even in a larger ſum than ſix hundred *panas.* The *Retnácara.*

" A fine ;" an amercement of ſix hundred *panas.* He ſhall be fined ; a fine ſhall be levied *(avahárya)* on him. The etymology of the term *ſwánwaya* is, ' he in whom there is a relation *(anwaya)* with *the owner* himſelf *(ſwa) ;*' that is, a ſon, and ſo forth, including brothers and the reſt ; for it is ſo declared by CULLÚCABHATTA. A ſeller, into whoſe hands the chattel had not been removed or transferred from the houſe *of the owner* by another who is kinſman of the owner ; ſuch a ſeller, *we ſay,* not being related to the owner, commits an offence equal to larceny. If the ſale of a chattel transferred into his hands by a ſon or other kinſman of the owner, be made by one not related to the owner, he ſhall be puniſhed in another mode : on this a queſtion ariſes, to ſatisfy which the commentator adds, ' if the embezzlement be the act of another, and the ſeller be unallied *to the owner* (for the ſign of the privative " a " muſt be underſtood), he ſhall be fined even in a larger ſum than ſix hundred *panas.'*

By

By the particle ' even ' it is intimated, that a larger fine than six hundred panas is founded on the reason of the law. According to this opinion, the rule concerning a sale without ownership, by one unallied to the owner, is two-fold.

But the author of the *Calpateru* says, that by which a thing departs *(apasarati)* or *is transferred*, is a claim or title *(apasara)*, as acceptance and so forth : he who has not such a claim or title, is not a claimant under the owner. If the property of another be sold, without acceptance of donation or other claim under him, by one not related to him, the seller shall be punished as a thief.

And this interpretation is approved by BHÁGURI, the *Méd'hátit'hi*, and the rest. MISRA also fully approves it ; and according to this opinion, the rule concerning sale without ownership, by one unallied to the owner, is single, and there is no distinction of embezzlement, or no embezzlement by a kinsman : however, the term "claimant under him," becomes superfluous according to this interpretation ; for if a man sell property obtained by acceptance of donation or the like, it is not sale without ownership, since the effects had become his property by the acceptance of donation. Considering this objection, the author of the *Retnácara* has approved another interpretation. CULLÚCABHATTA expounds the word *apasara*, acceptance, purchase or the like : he to whom no such title has been given by the son or other near kinsman of the owner, is not a claimant under him *(anapasara)*. Consequently, he has nearly followed the opinion of the *Retnácara*. When the son or near kinsman of the owner is giver or seller, there is a ground of claim : even on the opinion of the author of the *Calpateru* and the rest, this interpretation may be adopted ; for, in answer to the question from whom accepted, the owner must not be assumed, but his son or near kinsman, else the term *(anapasara)* would be unmeaning ; and if a term can become pertinent, it should not be considered as a superfluous term, expressive of what is naturally inferred. Consequently, the opinions of all authors coincide.

The son, or other kinsman, who had given or sold the thing to the person who sells it again without ownership, shall be amerced ; for he causes the sale without ownership to be made. Or this is intimated by the author of the *Retnácara*, ' if the embezzle-

ment

ment be the act of another, &c.' for, if a thing obtained by purchase from a kinsman who embezzled it be sold, the kinsman who first sold it to the *last* vender shall be fined six hundred *panas*; and it appears from the particle "even" or "also," that the seller, who had purchased it from a kinsman, shall be amerced.

It must be considered, that if a son or other kinsman, secreting any property, sell it through an intermediate person, the seller shall not be punished as a thief, but shall be amerced in six hundred *panas*, or the like: and the intermediate person, being in fact a substitute only, shall not incur the punishment of a sale without ownership, but receive severe reproof or other reprehension suitable to such improper conduct; but the man who sold the thing through an intermediate person, incurs the amercement mentioned.

XLI.

MENU:—By this rule shall that man be punished who ignorantly makes a sale without ownership; but if he knowingly do so, he is liable to the punishment of larceny.

Attributed by CHANDÉSWARA to MENU, but inserted by MISRA after the texts of MENU, premising the word "so." Is it not inconsistent with the following text, which, declaring innocent the sale of another's property inadvertently made, shows that there shall be no punishment?

XLII.

Matsya Purana:—That man who ignorantly sells the goods of another is free from offence; but if he knowingly do so, he is liable to the punishment of larceny.

CHANDÉSWARA explains free from offence, exempt from capital punishment, not exempt from amercement.

What

What is the meaning of the terms "by this rule" (XL)? MISRA replies: he who ignorantly ſells the property of another, ſhall be puniſhed with an amercement of ſix hundred *panas;* but he who knowingly ſells another's property, ſhall be puniſhed as a thief, by mutilation and the like.

Shall the man who inadvertently ſells the property of another be fined ſix hundred *panas,* whether he be a kinſman of the owner or not? Some hold, that a kinſman of the owner, who ignorantly ſells property not his own, ſhall be fined ſix hundred *panas;* but knowingly ſelling it, he ſhall be puniſhed as a thief: and if, not being a kinſman, a man ignorantly ſell the property of another, he ſhall be puniſhed as a thief; but if he wittingly ſell it, the law knowing no greater puniſhment, he ſhall, in that caſe alſo, be puniſhed as a thief: and the meaning of the text is, "by this rule, *that is,* by a pecuniary fine of ſix hundred *panas,* "and by the puniſhment of larceny, ſhall the kinſman and "ſtranger reſpectively be puniſhed, if they ignorantly ſell the "goods of another; but whoever knowingly ſells the goods of "another, whether a kinſman or no kinſman, ſhall be puniſhed "as a thief:" and the text of the *Matſya Purána* relates to kinſmen; for a ſtranger is in all caſes puniſhed as a thief.

Others ſay the pronoun "this," in the expreſſion "by this rule," referring to the ſubject of thought, intends a fine of ſix hundred *panas;* and the meaning is, that a ſtranger, inadvertently ſelling the goods of another, ſhall be fined ſix hundred *panas;* and the expreſſion "he commits an offence equal to larceny," ſuppoſes the wilful ſale of another's property: but a kinſman, whether ignorantly or knowingly ſelling the goods of another, ſhall be fined ſix hundred *panas,* for the law has not ſhown a leſs puniſhment. It cannot be objected, that there is no argument whereon to eſtabliſh ſuch a bad conſtruction; for, on any other conſtruction, the puniſhment would be diſproportionate. Thus the very puniſhment which is due when a man ſeizes a thing in the night and ſo forth, knowing it to be the property of another, would be incurred by one who, keeping a depoſit to oblige the owner, (and the chattel being placed with his own goods, and being ſimilar in quantity,) ſells that chattel which belongs to another. This would be highly inconſiſtent with common ſenſe; and the text of the *Matſya Purána* expreſsly declares, that there

is no offence. If it be ſaid that text ſhould be otherwiſe explained, they anſwer, can a capital puniſhment be proper in a caſe in which it is declared, in general terms, that there is no offence?

Others again ſay, the *Matſya Purána* declares innocent the holder of a depoſit or the like intruſted to him by the owner himſelf; but the puniſhment of a man who, finding another's chattel dropped on the road, ſells it, thinking it his own, is mentioned by MENU: and this ſhould be expounded in conformity with the opinion of others, becauſe the ſeizure of a chattel dropped on the road is as it were a theft.

The beſt of theſe opinions ſhould be ſelected by the wiſe; but one opinion only ſhould be adopted. In ſuch detail has puniſhment been mentioned for the caſe of a ſale without ownerſhip; and that puniſhment is only inflicted when the owner has proved his property.

XLIII.

CÁTYÁYANA:—The owner of a thing, which he loſes, *and then finds*, ſhall recover it, if he prove by credible witneſſes that it was his own, and that he never gave, ſold, or otherwiſe aliened it.

"By credible witneſſes;" by competent evidence. The word "abandoned" denotes ſale, gift, or any other act annulling property. The *Retnácara*.

Conſequently "abandoned" (the term uſed in the text) does not merely intend "neglected," for in this place it may indicate any act annulling one's own property, and comprehend gift, ſale or the like: gift and ſale are repeated in like manner as one name of kine may denote cattle of that ſort, and a ſynonymous term in the ſame ſentence may intend cows only: therefore "abandoned," (or aliened,) denotes alſo gain, conqueſt, and acceptance.

The perſon who had loſt the thing ſhall recover it on ſhowing that it is in fact his own, by proving that he neither gave, ſold, nor otherwiſe aliened it. Or he ſhall recover it on proving that it was his own, and that he never gave, ſold, or otherwiſe aliened

aliened it. Confequently the order of procedure is this: firft, on feeing his chattel in the poffeffion of any perfon, he has claimed it, and the buyer has produced the feller; next, in a conteft with the feller, let the owner prove his property, by fhowing that the thing was his own, and that he never aliened it. Let not the buyer conteft the property, for VYÁSA directs that "the law-fuit fhall be continued between the owner of the thing loft and the feller" (XLIX): but if the feller be not forthcoming, the fuit muft be defended by the purchafer; as will be mentioned in another place.

XLIV.

CÁTYÁYANA:—But if fuch claimant prove not the thing to be his own by credible witneffes, he fhould be punifhed as a thief, for the fake of deterring *others* from making falfe claims.

"Credible witneffes;" mentioned approximately. Proof in general is meant. The *Retnácara* notices another reading, "if he prove it not by kinfmen;" which is explained as mentioned incidentally, intending proof in general: fome, it fays, read, 'if he prove it not by credible witneffes;' and the fame meaning fhould be inferred. That is, credible witneffes indicate proof in general: the word (which literally fignifies making known) does not merely intend witneffes making known *the fact;* but, taken in a fecondary fenfe, with and without its primary fenfe, intends poffeffion and other proof: for the purport is the fame as in the text which will be quoted from YÁJNYAWALCYA (XLV).

"For the fake of deterring, &c." to prevent repeated claims. Thus, being punifhed to prevent a repetition of the offence, he may not repeatedly prefer falfe claims: and, the claim itfelf being criminal, as often as he makes a claim, the truth of which he cannot eftablifh, fo often fhall he be punifhed; fince punifhment for each claim is proper, as it is for repeated theft. Thus fome expound the text.

XLV.

YÁJNYAWALCYA:—The right to a thing loſt, *and then found,* muſt be proved by the mode of acquiſition, or by *evidence of* poſſeſſion; otherwiſe, on failure of proof, a fine equal to a fifth part *of its value ſhall be paid* to the king.

Let the owner of a thing which has been loſt, and is found, prove his property by the mode of acquiſition, (by purchaſe or the like,) or by *evidence of* actual enjoyment; otherwiſe, on failure of this and other proof, (that is, the property not being proved,) a fine equal to a fifth part muſt be paid to the king: this conſtruction agrees with the gloſs of the *Retnácara.* The written contract of ſale is evidence of a purchaſe, and ſo in other caſes; but actual enjoyment, even without proving a purchaſe or the like, is preſumptive evidence of property.

XLVI.

VRĬHASPATI:—The covetous man, who, without any right, claims the property of another, on failing in his proof, ſhall be compelled to pay a fine *equal* to double *the value of the thing claimed.*

This payment of a fine equal to double the value, ſuppoſes a claim covetouſly made, knowing the thing to be the property of another; but a fine equal to a fifth part of the value, as mentioned by YÁJNYAWÁLCYA, ſuppoſes a claim made by miſtake: there is no contradiction. The *Retnácara.*

What is the import of the words of CÁTYÁYANA, "he ſhould be puniſhed as a thief" (XLIV)? Some hold, that this repeats the puniſhment of theft. Thus, when a fine equal to double the value is mentioned, reference muſt be had to the text of VYÁSA.

VYÁSA:—The man who ſteals hollow canes, flowers, roots

roots or fruit, ſhall be compelled to pay a fine equal to double their value, or an amercement of five *criſhnalas.*

"Hollow ſubſtances;" canes and the like. The word *criſhnala* intends a quantity weighing a barleycorn. So the *Retnácara,* in the chapter on Theft. The terms of the text of YÁJNYAWALCYA intend five times the value; conſequently, when a fine equal to five times the value is mentioned, reference muſt be had to the text of NÁREDA.

NÁREDA:—For *ſtealing veſſels* made of wood, graſs, or earth, bamboos and veſſels made of bamboos, tendons, bones, or leather;

2. Pot-herbs, eſculent roots, fruits or flowers, milk or the like, or the produce of the ſugarcane, ſalt, or oil;

3. Victuals cooked, or *any thing* prepared for food, wine, boiled rice, or any cheap article; the fine is five times the value of the thing ſtolen.

And ſo, for other things, the amercement muſt be underſtood to be the ſame with the fine in caſes of theft. But this is not ſatisfactory, for it diſagrees with the *Retnácara.*

Others explain the text (XLV) differently. Let the owner of a thing loſt prove his property by the mode of acquiſition, or by evidence of prior occupancy. Therefore, if it be proved in another mode (that is by witneſſes), or if it be not proved, a fine equal to a fifth part of the value ſhall be paid. Another caſe, *they ſay,* is mentioned by VYASA.

XLVII.

VYÁSA:—If the plaintiff prove not his loſs by witneſſes, he ſhall *in that caſe* be compelled to pay double its value; and the purchaſer is entitled to the thing.

They

They expound this text, "Let him not prove his loſs by witneſſes, &c." Let him prove his property in the thing which has paſſed from the right owner to another perſon; he ſhould not prove his right by witneſſes, but by other proof, as mentioned by YÁJNYAWALCYA. If he cannot prove his right in the mode ordained by YÁJNYAWALCYA, what is the conſequence? The text declares, "he ſhall be compelled to pay, &c." and the purchaſer is entitled to the thing; that is, the claimant loſes the cauſe. But if he cannot bring witneſſes, CÁTYÁYANA directs that he ſhall be puniſhed as a thief (XLIV). It ſhould not be objected, that, if the right owner be unable to prove his property by the mode of acquiſition, why ſhould he bring witneſſes? Witneſſes ſhould be brought for the purpoſe of obtaining a mitigation of the fine: the king ſhould take evidence to decide according to the honeſt diſpoſition of the party. Thus the expoſition given in the *Retnácara*, to reconcile the texts, is appoſite: the text of YÁJNYAWALCYA (XLV) is applicable to the caſe of a claim made by miſtake; and the texts of VYÁSA and VRĬHASPATI, to a claim made from a motive of avarice.

That is totally wrong. If witneſſes be not adequate proof, how ſhould the fine be mitigated, under thoſe texts? If they be adequate proof, why ſhould not the party be exempted from a fine, under thoſe texts? And it contradicts the text of CÁTYÁYANA (XLIV), which ſhows that the owner ſhall recover a thing loſt and then found, if he prove by credible witneſſes that it was his own, and that he never gave, ſold, or otherwiſe aliened it. The true interpretation of the law is this: he who cannot prove his right incurs puniſhment, becauſe his offence is ſimilar to larceny (XL and XLIV). Conſequently he ſhall be puniſhed as a thief (even though he have not actually taken the goods of another) if he make the attempt; for puniſhment is mentioned generally by CÁTYÁYANA. A diſtinction is declared by YÁJNYAWALCYA and VRĬHASPATI (XLV and XLVI), according to the different motives of the claim, miſtake or avarice. The text of VYÁSA (XLVII) muſt be ſupplied with the words *if* and *in that caſe*: "if the plaintiff cannot prove his right by credible witneſſes, he ſhall in that caſe be compelled to pay a fine equal to double the value of the thing claimed:" and this text, which relates to the caſe of a law-ſuit between the owner of

of a thing loſt and the buyer, may, from parity of reaſoning, be applied to a law-ſuit between the owner of the thing loſt and the thief; therefore, in ſuch a caſe, the ſuppoſed thief obtains the thing.

When the buyer cannot produce the ſeller, nor prove a fair purchaſe, he ſhall pay an amercement, as directed by the following text:

XLVIII.

CÁTYÁYANA:—The claimant ſhould firſt prove his property by oral evidence; next, to clear himſelf, the buyer ſhould prove a fair purchaſe by credible witneſſes:

2. If he cannot produce the ſeller, let him even juſtify the purchaſe; and if the purchaſe be juſtified, he ſhall in no wiſe be blamed by the king.

3. Let him prove a publick purchaſe by honeſt and credible witneſſes: there is no other mode propounded, divine or human*.

The order of proceeding ſhould be nearly ſuch. A man finding a thing in the poſſeſſion of ſome perſon, claims it as his own; and the poſſeſſor alleges that he purchaſed it: in that caſe, if he can point out the ſeller, and the ſeller acknowledge the ſale, the ſuit muſt be maintained againſt the ſeller, as above mentioned. But if he cannot point out the ſeller, then the claimant muſt prove his property by ſufficient oral evidence; and the buyer muſt afterwards juſtify the purchaſe by credible witneſſes, that is, he muſt prove the actual purchaſe. The buyer has a right to prove a fair purchaſe, if he cannot point out the ſeller; but if he point out the ſeller, he cannot afterwards offer proof of a fair purchaſe (XXXV 2). As this juſtification is of leſs force, the text proceeds, "if he cannot produce the ſeller, let him even juſtify the purchaſe" (XLVIII 2): the word "even" ſhows a diſtinct order of proceeding; if he cannot produce the ſeller, (if he cannot cauſe him to be apprehended,) let him juſtify the purchaſe, or let

* The text cited at V, 39. is again quoted in this place.

let him prove his purchafe by credible witneffes. But if the feller, attending, do not acknowledge the fale, let the buyer compel an acknowledgement by the evidence of his own witneffes, who knew of his purchafe; and this only is a true production of the feller: it is not fufficient that he merely point out the perfon of the feller.

Is not this inconfiftent with the text of VYÁSA?

XLIX.

VYÁSA:—But if the feller be produced, the purchafer fhall by no means be condemned; for then the law-fuit muft be continued between the owner of the thing loft and the feller.

It is not inconfiftent; for this is proper, fince the word 'law-fuit' here denotes the fuit promoted by the original owner of the thing to obtain his property. When a man claims a thing which has been purchafed by any perfon, why fhould the buyer unneceffarily take the trouble of producing the feller? But when the owner proves his property by witneffes or otherwife, that trouble muft be taken.

L.

MENU:—But if the vender be not producible, and the vendee prove the publick fale, the latter muft be difmiffed by the king without punifhment; and the former owner, who loft the chattel, may take it back *on paying the vendee half its value.*

If the vender, being dead, or having gone to another country, cannot be apprehended, and the vendee prove the publick fale, he is not liable to punifhment; he muft be difmiffed by the king; and the owner of the thing fold without ownerfhip fhall receive the chattel from the buyer. CULLÚCABHATTA.

A diftinction will be mentioned in refpect of what fhall be recovered.

Declaring

Declaring the mode of juſtification, CÁTYÁYANA ſays, "let him prove a publick purchaſe, &c." thus clearly excluding juſtification by any other mode; "there is no other mode," &c. Ordeal is not ſufficient proof; but the ſale muſt be proved by human teſtimony. Or the ſenſe may be, "no other proof, divine or human, ſhall be admitted, except the evidence of witneſſes." In the abſence of the vender, a paper in the vender's own handwriting is no evidence, without witneſſes. Is adverſe poſſeſſion for the ſpace of twenty years, or the like, inadmiſſible proof? Say not, "be it ſo;" for that would be inconſiſtent with common ſenſe. To this ſome reply, that the evidence of witneſſes, as the mode of proof required from the owner of a thing loſt, is only mentioned illuſtratively by YÁJNYAWALCYA; as proof by kinſmen, in the text of CÁTYÁYANA, alſo denotes generally proof of a title or of previous poſſeſſion. It cannot be objected that a written document would be proof of right; for that is not admiſſible evidence in ſuch a caſe. Neither can it be objected that there is a diſtinction in the expoſition given in the *Retnácara*, *on the text of* CÁTYÁYANA (XLIV); for that is otherwiſe explained by the ſame author.

But the author of the *Retnácara*, expounding kinſmen as intending proof in general, ſays, 'if kinſmen, that is, witneſſes, cannot be produced, other evidence may be brought.' It muſt be conſidered, that if ordeal be admiſſible proof, the mention of it is ſuperfluous, ſince it would be comprehended in the general ſenſe of the expreſſion uſed in the text of CÁTYÁYANA. It cannot be objected, that it is only mentioned for the ſake of the order *in which different proofs are admiſſible;* for ordeal is directed on failure of other proof.

Proof is declared to be by writing, by poſſeſſion, or by witneſſes: on failure of theſe ſeveral proofs, one of the ſeveral ordeals is ordained.

Human teſtimony cannot be poſtponed to ordeal; it would be contrary to common ſenſe. Thus, ſome perſon having received the ſtolen property of another, and afterwards the true owner ſeeing it, the poſſeſſor pleads the purchaſe, and, to prove it, offers a document

a document in the ſeller's own handwriting; in that caſe, it would become ſufficient proof. In cauſes concerning loans and the like, the document muſt be verified by compariſon with another document in the ſame handwriting: but here, without reference to the vender, a written document cannot be given in evidence; yet the writing of a perſon reſiding at a diſtance would, when collated with another document in his handwriting, become evidence after the death of the writer. Nor can it be ſaid that there is no difficulty in admitting a written document to be ſufficient proof of property on the part of the owner of a thing loſt, ſince the ſale regards him; and the evidence on both ſides being equal, the proof fails. A document in the handwriting of a vender who reſided in a diſtant country, is no evidence; but if his reſidence be near, even his ſons, acknowledging the ſale made by their father, become witneſſes. The word "there" ſhows, that ſecondary evidence, in neglect of the beſt evidence, is not admiſſible. It would contradict the legiſlator's own words: thus, if the word kinſman be uſed for proof in general, "there" alſo refers to proof. The meaning is, that if there be poſſible evidence, another mode of proof (that is, proof by ordeal,) ſhall not be admitted. What follows from the rule, that proof by ordeal is not admiſſible if there be evidence, muſt be well examined. Thus ſome interpret the law.

VRĬHASPATI:—Poiſon is the ordeal ordained where a thouſand *pieces* have been ſtolen; fire, where *the theft is* a fourth leſs, *or ſeven hundred and fifty pieces;* water, where *it is* three-fourths leſs, *or two hundred and fifty pieces;* and the balance, where half, *or five hundred pieces have been ſtolen.*

Ordeal being thus directed in caſe of an accuſation of theft, and this being, in its effect, ſimilar to a charge of theft; therefore the opinion of CHANDÉSWARA is right. "There," &c. (XLVII 2), refers to witneſs, explained in the *Retnăcara* evidence in general. As for what has been ſaid, that if a man, alleging a written document in the ſeller's own handwriting, exhibit a document ſubſcribed by a perſon whoſe reſidence is in a diſtant

diſtant country, then, a writing being no evidence, proof muſt be required; all that is futile, for it becomes evidence when the handwriting of the ſeller is proved; and here, if the handwriting be doubted, proof may be required: and if it be wiſhed to prove the handwriting by compariſon with another document, even in that caſe the writing may be ſo proved. This again is nothing to the purpoſe.

When neither party can adduce evidence, what ſhall be the deciſion? and when the buyer cannot juſtify the purchaſe by evidence, but the plaintiff proves his property, what ſhall be done? The law declares it, "the defendant not clearly proving, &c." (XXXIX). If the plaintiff ſay, "this metallick veſſel contained a thouſand pieces of ſilver belonging to me, reſtore me the veſſel with the money," the veſſel and the money muſt be reſtored, if the defendant cannot perform ordeal; but if he can diſprove the money by ordeal or otherwiſe, the veſſel only ſhall be reſtored. Thus ſome expound the law. But this is futile; for it is inconſiſtent with the practice of great perſons. An expoſition eſtabliſhed in one caſe is applicable to another, unleſs there be a *ſufficient* objection: under this maxim, the very rule delivered under the title of Loans and Payment (Book I, V. cxcix.) is proper in this caſe.

From this text, delivered under the title of Loans and Payment, it appears, that, much being claimed by the creditor from the debtor, ſo much only as is proved ſhall be recovered: and the ſame is proper even in this caſe. The expreſſion being general, if it be received as applicable to the whole claim, then an unproved claim is ſurely null. It ſhould not be objected, that the text is limited to the title of Loans and Payment by the uſe of the term *dhanì* (which commonly ſignifies creditor); for its literal meaning of owner is pertinent.

LI.

NÁREDA:—Let not the purchaſer conceal the man from whom he purchaſed; on that man depends his own juſtification: if he act otherwiſe, his crime is held equal, and he ſhall ſuffer the ſame puniſhment.

If

If he act otherwise, if he conceal the vender, his crime is equal to the crime of the vender, and he ſhall ſuffer the ſame puniſhment: *that is, the puniſhment of larceny, to which the vender would have been liable.* The *Retnâcara.*

If the buyer be a near kinſman of the owner, ſhall the penalty be an amercement of ſix hundred *panas*, as directed for ſale without ownerſhip by a kinſman (XL); or ſhall he be puniſhed as a thief? It is ſaid, ſuſpicion of theft being removed, if the vender be proved, although his perſon be concealed, there is no difficulty in ſaying, that the penalty for concealing his perſon ſhall be ſix hundred *panas*; but if the vender be not proved, the buyer appears to be the real thief, and ſhall be puniſhed as ſuch, even though he be a near kinſman. That, however, is not indicated by this text; but, a fine or *puniſhment* being directed by the text of CÁTYÁYANA (XXXVIII), it appears that he ſhall be puniſhed as a thief, becauſe his crime is equal to larceny.

What is the concealment of the vender? If it conſiſt in not particularly mentioning that the thing was purchaſed through that perſon; why ſhould the buyer do ſo? When he diſhoneſtly buys the property of his own kinſman, from a ſtranger, at a low price, having been requeſted by the ſeller not to make known that it was ſold by him; the buyer might in that caſe conceal the man from whom he purchaſed, through fear of forfeiting his friendſhip, or from ſome other motive. Or the word may be explained "the written contract;" and the ſenſe may be, "let not the purchaſer conceal the contract, &c." and the motive for concealing it may be the apprehenſion of making known the very low price at which the thing was bought.

How is it known that the contract is concealed? It is not aſcertained by the mere omiſſion of producing it, whereby a failure in juſtifying the purchaſe would imply wilful concealment: nor does it appear from the text of NÁREDA (LI), that the puniſhment *of larceny* is ordained for a ſimple failure in juſtifying the purchaſe; were it ſo, the offence would be equal whenever the purchaſe was not juſtified; but, this not being declared, the expreſſion, "let not the purchaſer conceal, &c." cannot be ſo applied. To this it is anſwered, if the buyer in the firſt inſtance produce the contract, and afterwards, defending the ſuit before other arbitrators, conceal it, in this and other caſes concealment is

is ascertained. In this case, if the purchase be proved, the purchaser, being a near kinsman, shall not be punished as a thief, but be fined six hundred *panas* for his offence in concealing the contract.

But, if the owner have no proof of his property; nor the buyer, of his purchase; the claimant loses the cause: for the purchase is *not* to be justified, *until* after the claimant has proved his property.

LII.

VRIHASPATI:—In a suit where proof is deficient, the king must himself decide according to the equal, greater, or less credibility of the parties.

Employing spies in the manner mentioned under the title of Bailments, and thus ascertaining the equal, greater, or less honesty or dishonesty of the parties, the king must himself decide the suit. The *Retnácara*.

The meaning is this: when a buyer, sued by the owner, has produced the seller; and, the suit being continued against the seller, both parties assert their own property in the thing, but neither have sufficient proof; in such a case this text is to be followed. The decision where both parties are equally credible, will be mentioned: if one party be less credible, he loses the cause, and the person whose credibility is greater gains it.

It is the business of a spy, assuming the appearance of a thief, or some *other* disguise, *such as that* of one employed in the service of a petty prince, to insinuate himself into the friendship of the man, and detect his conversation and conduct with his relatives. Sometimes the spy says, " to-day let us carry to a distant place, and sell this chattel which has been privately obtained;" and according to his answer his conduct is to be presumed. Wise kings, or their officers, may themselves adopt other modes.

According to this opinion, if neither party can adduce proof, their general conduct should be examined; and thus may the suit be decided: in other cases the general conduct even of witnesses should be examined; otherwise the king would be unjust, and the

the lofs would be equally borne by both parties whenever proof is deficient. This fhould be examined by the wife.

But MISRA holds, that if the purchafe was publickly made, and the buyer cannot produce the vender, his place of abode being unknown, the buyer fhall not be fined; for he is not criminal. Who then fhall have the thing? Shall the owner have it, becaufe his property is not annulled? or fhall it remain in the buyer's poffeffion until he receive the price? VRĬHASPATI fays, in a fuit where proof is deficient, if it be pleaded that there are not means of afcertaining the vender's place of abode; (if the buyer fay, "I know not where the feller is;") the king muft decide according to the equal, greater, or lefs credibility of the parties: the lofs muft neceffarily be borne by both parties, according to their refpective characters.

What decifion fhall be given? The fame legiflator propounds it:

LIII.

VRĬHASPATI:—If a purchafe be made before a publick affembly *of traders*, with the knowledge of the king's officers, but from a feller whofe dwelling-place is unknown; (or if a claim be made after the death of the feller, *though known*;)

2. The owner of the thing may recover his own property, on paying half the price given; half the value is loft to each of them: fuch muft be the decifion.

"Before a publick affembly of traders;" meaning generally a market or the like. "With the knowledge of the king's officers;" officers appointed by the king for that purpofe: this alfo is a general expreffion. "From a feller whofe abode is unknown;" from one whofe dwelling is not well known. So the *Retnácara*.

In the cafe of a private purchafe, the buyer muft reftore the thing to the owner without receiving back the price, as already mentioned.

How

How can the buyer be entitled to half the price, according to the opinion of 'SÚLAPÁNI ; ſince the owner's property in effects ſtolen is not annulled, and the owner has not received the price? But, according to the opinion of VÁCHESPATI BHATTÁCHÁRYA, the buyer receives no part of the price, ſince the ſale is null, as a ſale without ownerſhip, although the thief's property in the thing have been transferred ; or he is entitled to the whole price, becauſe he has property in the thing.

LIV.

VRĬHASPATI :—A purchaſe from an unknown ſeller is one fault; negligence in keeping the thing is another : and theſe two faults are to be conſidered as juſt cauſes of loſs to each.

By mentioning that both are in fault, it is meant that equal loſs is the puniſhment of both faults. Thus, according to 'SÚLAPÁNI, although the owner's property in the thing was not annulled, he pays half the price, on account of his fault in neglecting the cuſtody of the thing ; and the buyer loſes half the price, on account of the ſlight offence of buying from an unknown vender.

According to this opinion, is not the half price received back by the buyer an exceſſive advantage ? He does not receive half what remains above the loſs ; for the thief, not the owner, received the price from him : conſequently the loſs of the chattel received from the thief is the actual loſs ; and what the buyer receives from the owner becomes his gain, ſince the owner had no concern in the ſale : what is given by the owner, ought therefore to be taken by the king as a fine. To this it is anſwered, ſince it is not fit that the king ſhould receive the fine for the fault of neglecting the cuſtody of the thing; and ſince the payment of it is neceſſary under this text ; and ſince it is alſo neceſſary that the buyer ſhould receive it from ſome perſon ; the king ſhall cauſe it to be paid to him. " The king ſhould himſelf decide, &c." (LII). Therefore, although it might not accord with general reaſoning, the buyer ſhall receive half the price with the approbation of a king who governs according to law.

According

According to the opinion of VÁCHESPATI BHATTÁCHÁRYA, there is no difficulty: the full property is revived, where the feller is known, by the mere production of the feller: but in this cafe, full property is revived after paying half the price; and the buyer is not entitled to receive the whole price, becaufe there has been a fault on his part.

LV.

MARÍCHI:—If a purchafe be made by day before a publick affembly of traders, with the knowledge of the king's officers, the purchafer is juftified, and acquires the abfolute property.

2. But if he cannot produce the feller, his dwelling-place being unknown, the lofs fhall be borne equally by the buyer, and by the *former* owner who had loft the thing.

"His dwelling-place being unknown," or it being uncertain whether he be alive or dead: the expreffion is general. If the property be not proved, what fhall be the decifion in the fuit between the owner and the thief? The fame; for both are equally in fault: and the *Retnácara* fo expounds the text.

LVI.

VISHNU:—There is no crime in him who ignorantly buys *from a ftranger* the goods of another: but the owner fhall recover his property.

On paying half its price muft be fupplied in this rule: thus it does not relate to private purchafes; if it did, it would be improper to fay that a buyer fhould be acquitted without proof of a fair fale, though fufpected of theft: but, referring the rule to an open purchafe, it coincides with the text of VRĬHASPATI (LIII), and fitly fhows that the property fhall be recovered on paying half the price. It cannot be faid that no fine is incurred if

if a ſale privately made be any how proved ; but the owner ſhall recover his property without paying any part of the price: and in the caſe of a fair ſale, the proper deciſion is that which is mentioned by VRĬHASPATI (LIII). A ſale proved, partakes of the nature of a fair ſale.

MISRA ſays, ſome purchaſes, though made from the owner himſelf, are queſtionable: and the rule of deciſion is the ſame as in Sale without ownerſhip.

LVII.

VRĬHASPATI:—There is no fault in the man who purchaſes a thing at a fair price, delivered by the owner in *the* preſence *of credible perſons;* but a fraudulent purchaſer is a thief:

2 A fraudulent purchaſe is declared to be that which is made at a very low price, in a private apartment, in a place out of the town, by night, in a ſituation where the bargain cannot be overheard, or from a man not known to be honeſt.

Delivery by the owner in the preſence of credible perſons: the text muſt be ſo ſupplied. By the ſubſequent phraſe, " a fraudulent purchaſer is a thief," which is expounded, purchaſing in the receſſes of a houſe, it muſt be underſtood, that a fair purchaſe is made in a place fit for ſuch tranſactions: a very low price being mentioned in the ſubſequent verſe, " price" in the firſt verſe ſignifies a fair price. Accordingly, if a man buy a thing at a very low price, even from the owner himſelf, whom he has brought to his own houſe in the night, and whom he has deceived, he is criminal, and ſhall be puniſhed as a thief. But there is no offence in a ſale voluntarily made, at a low price, by an indigent man, with the approbation of great perſons: and ſuch is the practice.

What is the rule concerning traders who give a little grain or the like to indigent perſons diſtreſſed for ſubſiſtence and applying for a loan, and who take a writing for the debt at a high valuation,

valuation, or who receive a very high price for a ſcarce and neceſſary article? Is the contract legal or not? The queſtion is anſwered, as in the title of Loan and Payment: under the text of CÁTYÁYANA (Book I, v. XXXVII I), intereſt voluntarily promiſed muſt be paid; but if the promiſe have been extorted by force, ſuch intereſt ſhall not be paid: ſo, in this caſe, a price or the like, voluntarily agreed on, ſtands good; but if conſent have been extorted, it does not ſtand good. For example, a man, diſtreſſed to provide for his father's obſequies, wiſhes to ſell his own furniture; but, not *readily* finding a purchaſer, applies to ſome perſon, ſaying, "aſſiſt my occaſions;" the other, hearing all the circumſtances, replies, "this is your purpoſe, but I deſire gain;" and the vender rejoins, "I know that my purpoſe muſt be accompliſhed by you at the expenſe of your own wealth; I am fully ſatisfied to ſell at a low price:" in ſuch a caſe there is no offence in buying at a low price. But, ſhould he, being of a harſh diſpoſition, and deſirous of purchaſing the thing at his own price, offer to a man, who cannot go elſewhere, half the price at which ſuch things are ſold on all ſides, and bid him go where he pleaſes *if he will not take that price;* in that caſe a purchaſe at ſuch a price is not valid: and the ſame muſt be underſtood of fixing an exceſſive price, according to the circumſtances of each caſe. But there is no offence in traders who keep a ſtore of commodities for a long time, if they receive a high price, voluntarily paid for a ſcarce article: there is offence in obtaining a high price by deceit, harſhneſs, or the like. All this is ſtated as reſulting from the reaſon of the law, on the expoſition of the text as delivered by MISRA: it ſhould be examined by the wiſe.

CHANDÉSWARA, inſerting this text among thoſe which ſhow ſale without ownerſhip, ſays nothing expreſsly regarding it. After the text of VISHNU (LVI) he inſerts the following text:

LVIII.

NÁREDA:—An open purchaſer is clear of imputation, but a purchaſe in ſecret is a theft.

After this text, inſerting the text of VRÍHASPATI (LVII), he ſubjoins

ſubjoins the text of NÁREDA (XXXVIII) as expounding the ſenſe of the preceding text. If the text of VRĬHASPATI (LVII) relate to ſale without ownerſhip, the ſenſe is this; "delivered by a perſon pretending to be the owner." The term *(adhyacſha)* ſignifies one capable of ſuch tranſactions as ſale and the like. Civil contract is among the ſenſes of *acſha* in the Dictionary of AMERA. According to this interpretation, "from a man not known to be honeſt" *(aſatah)*, ſo expounded by CHANDÉSWARA, is pertinent in the literal ſenſe of the terms. It is mentioned to intimate that there is no offence, if the man, though in fact a thief, have the appearance of being no thief. But, according to the opinion of MISRA, it means, from a perſon not praiſed *or revered*, *that is*, from an infant or the like. AMERA mentions praiſed among the ſenſes of *ſat*. Or fraudulent purchaſe is here deſcribed generally.

LIX.

YÁJNYAWALCYA: — He who ſhall receive from the hand of a ſtranger, what had been taken from him, or what he had loſt, without giving notice to the king, ſhall be fined ninety-ſix *panas* of copper.

He who receives it, without giving notice to the king that his property had been taken away by that perſon, ſhall be fined ninety-ſix *panas*; for he is guilty of concealing a thief.

The *Retnácara*.

He ſhall be fined, becauſe he deprives the king of his due.

MISRA.

A fine is due from the thief to the king. Thus both gloſſes agree. A fine has been declared in the caſe of a ſale of loſt property by a ſtranger; conſequently there is nothing incongruous.

Is there no offence in ſelling a waif? There is if it be ſold within the ſpace of three years, but not if it be ſold after that term; for it is proper that another ſhould obſerve the ſame rule which is preſcribed to the king.

LX.

MENU:—Three years let the king detain the property, of which no owner appears, *after a diſtinct proclamation:* the owner, appearing within the three years, may take it; but, after that term, the king may confiſcate it.

2. He who ſays, "this is mine," muſt be duly examined; and if, *before he inſpect it,* he declare its form, number, and other circumſtances, the owner muſt have his property;

3. But if he ſhow not at what place and time it was loſt, and ſpecify not its colour, ſhape, and dimenſions, he ought to be amerced.

It muſt be noticed, that if the owner, ſhowing the time and place, and ſo forth, claim the thing even after three years, he may recover it, provided he had not neglected it. However, by the text of MENU, there is no offence in ſelling it after that term, if it be not claimed. Accordingly, ſince a waif is to be taken by the king, a man ſhall be puniſhed if he appropriate it without acquainting the king.

LXI.

MENU:—One commodity, mixed with another, ſhall never be ſold *as unmixed;* nor a bad commodity, as good; nor leſs *than agreed on;* nor any thing kept at a diſtance, or concealed.

Goods dyed with ſaffron and the like, mixed with goods dyed with ſaf-flower and ſimilar drugs, ſhall not be ſold *as unmixed;* nor a bad commodity as good; nor leſs than the weight agreed on; nor a thing which is at a diſtance; nor goods which have loſt their colour: this being ſimilar to a ſale without ownerſhip, the puniſhment ſhall be the ſame. CULLÚCABHATTA.

What

What quantity ſhall be taken to determine the proportion of puniſhment ſimilar to that of larceny? It is ſaid, ſo much as is the proportion of the inferior commodity mixed with another; or, computing the price of good and bad commodities, ſo much as is the gain by ſelling a bad commodity at the price of a good one, and ſimilarly in other caſes: for there is no theft in regard to the other portion of the ſale.

The law of ſale without ownerſhip being extended to this caſe, the fine for a kinſman is ſix hundred *panas*. It muſt be conſidered, in the caſe of ſale without ownerſhip, that if a trifle be ſold by a kinſman, the fine ſhould not be ſix hundred *panas*: for this would be diſproportionate. Where the fine for theft would be ſix hundred *panas*, he ſhould pay the ſame; and it is the limit of his amercement: but where the fine for theft would be leſs, he ſhould pay the ſame fine as a thief: and let it not be objected, that there is no argument whence to deduce whether ſix hundred *panas* be intended as a leſs or greater amercement than the fine for theft; it is proper that the fine be leſs, ſince a kinſman is entitled to the uſe of the property.

END OF THE FIRST VOLUME.

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